

THE LIFE OF  
HORACE BINNEY

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THE LIFE  
OF  
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THE LIFE  
OF  
HORACE BINNEY

WITH SELECTIONS FROM HIS LETTERS

BY  
CHARLES CHAUNCEY BINNEY



PHILADELPHIA AND LONDON  
J. B. LIPPINCOTT COMPANY

1903

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BY CHARLES CHAUNCEY BINNEY

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## PREFACE



IT may have caused some surprise that no complete memoir of Horace Binney was published shortly after his death, and before so many of those to whom such a book would have had a special interest, on account of their personal acquaintance with him, had themselves passed away. One cause of the delay was undoubtedly his own aversion to the idea of becoming the subject of a biography, coupled with the further fact that, owing to his fixed habit of destroying, from time to time, all the letters which he received, the material for a complete memoir was not in possession of his descendants at his death. Had his oldest son survived him, this lack could, and probably would, have been made up for by personal knowledge, but it was not known until a few years ago that many of Mr. Binney's letters had been preserved by the families of those who had received them. This discovery made it possible to prepare a fairly connected account of his whole life, but, owing to lapse of time, it has been left to one whose personal knowledge is only a memory of boyhood to attempt what could have been much better done by those of a generation ago.

In spite of this long delay, it is believed that even now a record of Mr. Binney's life and opinions may prove interesting not merely to lawyers, or even to Philadelphians, but to all Americans who believe in high ideals of character and citizenship. Apart from his eminence as a lawyer, he undoubtedly held for the last fifty years of his life (from 1825 to 1875) an exceptionally high place in public esteem, and

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wielded a remarkable influence. Though in public office for only a very short time, he was, in a very real sense, a public man, a recognized leader in his community. A keen observer of public affairs, and personally acquainted with many prominent men, his long life enabled him to understand, more clearly than younger men could do, the conditions which led up to the events of the Civil War period, the period when most of the letters in this volume were written.

The work of preparing the present volume has been mainly that of selection and compilation, in the hope of presenting, as far as possible, an autobiography. Fortunately a partial autobiography existed, written for Mr. Binney's children, and from this all the quoted extracts are taken, other than those which are specifically referred to as taken from speeches, letters, his European journal, or other writings. In making selections from the available material, references to strictly private and family matters have generally been excluded, except in the earlier chapters, where they were inseparately connected with the gradual development of his character. It is almost wholly as a lawyer and a citizen that he is shown here. Of his family life it is fitting to say that it was that of a wise, affectionate, and conscientious man, possessing a very decided character, but remarkably free from eccentricities. To describe it would be to admit the public into confidences to which he would under no consideration have admitted them himself.

In referring to Mr. Binney's opinions upon political and social matters, the effort has been to state them in his own words as far as possible, without undertaking either to champion them or to explain them away. If he was slow to change his views, he was at least not hasty in forming them, and while some of them may not command general assent, they were always such as no man need be ashamed



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to hold. He loved his country, and wished to see its government the best that human intelligence and virtue could produce. That his ideals were not attained, and apparently never would be, was to him a constant source of regret, but he never made it an excuse for any failure to perform the full measure of his duty as a citizen.

The problems which now confront the American people are some of them the same as those of Mr. Binney's time (many parts of his anti-protection memorial of 1824, for instance, might have been written to-day), while others are due to developments then scarcely contemplated; but in the case of all it is probable that the best solutions will be found to be those which accord with the fundamental principles upon which the government of this country was originally based. Those principles are perhaps more closely studied to-day, even by men who differ widely in the application of them, than at any time since the Civil War. To see how those principles shaped themselves in the mind of a man born while the cause of American Independence was still trembling in the balance may, therefore, be a matter of more than trivial interest; and if anything contained in this memoir prove an aid to the proper carrying out of those principles, or an incentive to their further study, its publication will have been amply justified.

PHILADELPHIA, July, 1903.



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# THE LIFE OF HORACE BINNEY



## I

### BIRTH AND CHILDHOOD

1780-1793

OF the paternal ancestry of Horace Binney nothing definite is known beyond the fourth preceding generation. There is a family of the name in Nottinghamshire, tracing its descent from the Binnoch, "a stout carle and a sture, and off himself dour and hardy," who, by a clever stratagem, seized Linlithgow Castle for Robert Bruce in 1313, and it has long been reported in this family that a member of it went to America in the seventeenth century. He may have been the John Binney, of Hull, Massachusetts, whose son John was born May 31, 1679, but this birth is the earliest record on which reliance can be placed. Another son, Thomas, born in 1687, was the father of Jonathan Binney, born in 1725, who removed to Halifax, Nova Scotia, and from whom the late Bishop Hibbert Binney, of Nova Scotia, was descended.

The second John Binney, a deacon of the church at Hull, had nine children, the eighth of whom was Barnabas, born March 22, 1723. He was a sea captain, and during a part of his life a planter in Demerara. He married Avis Ings, and their son Barnabas, the father of Horace Binney, was

born in Boston in 1751. He "was educated at the College in Providence now called Brown University, and received his degree of Bachelor of Arts in September, 1774. He held the first grade in his class, and pronounced the valedictory oration at the Commencement. It was in defence of the right of private judgement in matters of religion. The discourse shows great freedom as well as fearlessness of thought, and proceeded from a mind that was little disposed to submit to any human authority that had not the sanction of reason."

After graduation, Barnabas Binney went to Philadelphia to study medicine, being under the instruction, in part, at least, of Dr. Benjamin Rush. On May 25, 1777, he was married to Mary, daughter of Henry Woodrow, a lumber merchant, residing in the Northern Liberties. Before that date, probably, Dr. Binney entered the American army as a Hospital Surgeon, in which career he gained a high reputation for skill in the treatment of wounds. He was with the troops at Valley Forge in the trying winter of 1777-78, and was much attached to Washington. It was in that same winter, and on the anniversary of Washington's birth, that Dr. Binney's first child, Susan, afterwards married to John Bradford Wallace, was born.

The second child, Horace, the subject of this memoir, was born January 4, 1780, "in a house belonging to Thomas Williams, in the Northern Liberties, Philadelphia."<sup>1</sup> The city and adjoining districts had been evacuated by the British but a little over eighteen months before; New York and a considerable portion of the South were still occupied by them; and the prospect of the successful establishment of American independence was far from being assured. In fact, this par-

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<sup>1</sup> So stated by Dr. Barnabas Binney in his entry of the birth.



ticular year, 1780, was one which brought many disasters to the American cause, and seriously threatened its further progress. While neither Dr. Binney nor his wife were people who would easily lose faith in the cause to which they were devoted, it may well be that at times they realized the possibility that the infant of this apparently ill-starred year might grow to manhood as a subject of King George, and bear through life the stigma of being the son of a rebel. Less than two years after his birth, however, the child's citizenship was settled by the victory at Yorktown,<sup>2</sup> and the formal cessation of hostilities in April, 1783, permitted his father to return permanently to Philadelphia, though with a constitution seriously impaired by hardship in the field.

The history of Mr. Binney's boyhood is best given in his own words:

"At the close of the war my father moved his family to a house on the south side of Walnut, the second house east from Second Street. On September 20, 1838, I pointed out the site of the house to my wife and daughter Esther, the walls having just been taken down, to be rebuilt. My friend W. Meredith lived in it for many years, and after he left it was occupied by the Insurance Company of North America for offices. It was in that house that my present memory began to sprout. All previous existence is a blank to me; but I have distinct impressions of circumstances occurring in that house before I was five years old, and I think before I was four. I recollect well the death of my brother William,

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<sup>2</sup> Mr. Binney had "a very strong impression" that he had been awakened in the night by the watchman calling, "Past twelve o'clock, and Cornwallis is taken," and of the house being in an uproar in consequence. That the noise awakened him is very probable, but it is more likely that he was told as a child that he had been waked up on that occasion, than that he actually remembered the incident. Still, his memory all through life was exceptionally retentive. (See Gail Hamilton's *Life in Letters*, vol. ii. p. 708.)

who died there in March, 1784. I have an indistinct recollection also of my brother Henry, who died there on the 14th of July, 1783. On the 4th of January, 1785, the day I was five years old, my mother proposed me to my aunt Susan, as a guard to wait upon her home at night, and I well remember my elation at the thought. How soon does self-love show itself in a child!"

A less rigid censor might have ascribed this elation to the manliness and self-reliance which the boy undoubtedly developed at a very early age. Such development naturally resulted from the wise union of love and firmness which his parents, and especially his mother, invariably manifested towards him. Of her he wrote: "My mother's person was tall and erect, and her carriage of great dignity. The only instrument of command that she used with her children was her eye. I do not recollect to have ever felt the weight of her hand, or the reproof of her tongue, but her clear blue eye, the sharpest for a blue eye that I have ever seen, and yet the gentlest when bestowing caresses or approbation, used to rule us all, and myself in particular, with sovereign sway. Upon one occasion in my father's lifetime, as he was about to correct me for some fault, my mother came to him and asked him to let her punish me, saying she was sure he would not punish me severely enough. He accordingly gave me into her hands, and she took me into another room, where, instead of whipping me, she soon talked me into more tears and sorrow than any whipping could have produced. What my offence was I do not recollect; nor do I doubt that the scene was concerted between her and my father, whose hand I never felt. Her influence over me and all her children was unbounded. Her commendations were of the highest value to all of us; and I saw that sharp, speaking eye upon me whenever I did wrong."

The mother's health, always delicate, probably hindered somewhat her personal watchfulness over her children. At all events, Horace Binney, as a lad, met with more than even the most active boy's usual share of bodily mishaps, which, however, he afterwards looked back upon as not unmixed evils.

"During the same residence [in Walnut Street] I had the good fortune to have my leg broken by a horse and gig, and to tumble into an open cellar upon a pile of oyster shells, one of which left a scar upon my arm now about three inches long. This latter incident occurred, as I recollect, from a contest between my sister Susan and myself for one section of a piece of gingerbread, which upon a division I had reserved for myself, and which she insisted was the biggest half. She claimed it by right of seniority, and it may be supposed from what followed that I did not think the reason a sufficient one. I well recollect that as soon as the accident occurred she offered me peaceable possession of both pieces. I call these occurrences good fortune, for they, with others occurring before I was thirteen, seem to have forearmed by forewarning me against all personal accidents or injuries after that time. But it was altogether rather sharp teaching, for a broken leg, a broken arm, two broken ribs, cuts innumerable, being once hung up to a hook in the shambles of the market-place, and once suspended between two posts with my head in the gutter and my heels in the air, were more than enough to instruct a duller boy than I was.

"I ought to explain so strange a mishap [as that of the market-place]. When a part of the Seneca tribe of Indians visited Philadelphia in 1791 or 1792, one of the tribe, Peter Olesiquett, who had just returned from France, where he had been educated or civilized under the care of the Marquis de la Fayette, was an object of great curiosity. I had heard

my mother speak much of his manners and appearance. I happened to be in the market-house opposite Grindstone Alley, between Second and Third Streets, when the Seneca Indians were passing on the north side of Market Street, and to get above the heads of the crowd I mounted upon the railings of the shambles where the butchers hung their meat. Upon getting down I was held fast by a hook which entered near my right knee, and was lifted off by a bystander. The scar remains. The wound gave me trouble for several weeks."

While the family lived on Walnut Street, the boy attended the Quaker Almshouse school, on the same street, above Third Street. About 1786 they moved to a house on Arch Street, opposite Christ Church burial-ground, and he went to a school behind the Presbyterian church at the north-east corner of Third and Arch Streets, and, later on in that year, to the Grammar School of the University of Pennsylvania, where he proved himself equal to the requirements of the school-boys' code, as the following shows:

"My impression is that the City of Brotherly Love is less pugnacious than when I was a boy. A fight between two or more of the boys of this school, when I went to it, was a daily recreation to the others. Christ Church burial-ground, and the Friends' burial-ground on the east side of Fourth Street, then great fields of the dead, were the scene of the tournament, the walls being then of a height which boys could scale. A chip was placed on my head, youngling as I was, the first day I went to this school, and a very good boy named Andrew Hazlehurst, whom I afterwards liked very much, was told by one of the bigger boys that he didn't dare knock it off. Andrew's courage, however, was up to the attempt, and I could not with safety have ventured not to resent the aggression. It was a drawn battle, and my first

bloody nose in fight. We both were applauded and led quiet lives afterwards while we continued at school.

“The practice may have been borrowed from the mother country, from which we formerly borrowed more in school practices than we now do, or it may have been a remnant of the Revolutionary War. It never produced ill-will, nor was it the result of it. The boys liked each other as well as before, and there was no shame in defeat, if the vanquished party showed game, or bottom, as it was called.”

At the same school the boy received his first abiding experience of the importance of truth, an experience which he held to have been of lasting service.

“There was in the school a boy named Jack Robinson, a red-headed urchin, a few years older than myself, and who had acquired some influence over me, I know not what nor how. I wished to be agreeable to him, and hoping that he would refuse so inconvenient a gift as a turtle, I one day offered him one that I had—not. To my great horror, the present delighted him. He said he would accept it with pleasure, and would go home with me after school and get it. This I desired to prevent, and told him the turtle was in a rain-water cask, and could not be got at conveniently until the water was out. Robinson said, ‘Never mind that, I’ll get him out, and I’ll go home with you after school.’ My position was distressing, and nothing remained for me after school but to dodge Robinson, and get home as quietly as I could. I succeeded in this so well that the thing went out of my mind, and at the usual time I sat down to my dinner, in a back parlour facing the window that looked into the yard, with as little care and as much appetite as usual. But I had not taken half a dozen swallows before a shadow called my eye to the window, and I saw Robinson’s red head just rising above the partition fence, and as he held himself up

by his hands on the fence, his eyes straining to catch a glimpse of the rain-water cask. Until he let go his hold, and dropped out of sight, I did not draw a long breath, nor did I resume my dinner with much appetite. The question then was how to meet him in the afternoon, and what to say; and I thought over half a dozen lies, and rejected them all, as they called for a further lie at some other time to end the matter. I finally determined to tell him, when he should ask me, that somebody had stolen the turtle, and that I would try to get him another; and so it turned out. But I told him so with shame, and I may believe with contrition; for I did not for a long time cease to think with shame of this departure from the truth, which my own foolish promise kept alive in my mind. If the lie, which, like most of the lies of children, was a lie of weakness only, had not given me so much pain, it might have led to others of a worse description."

Although Dr. Binney's ancestors had belonged to the Congregationalist body, the established church of Massachusetts, some of the family, including himself apparently, had become Baptists. As he was married by the pastor of the First Baptist Church, his wife may have been connected, at least nominally, with the same religious body. In Philadelphia, however, his intimacy with Dr. Magaw, the rector of St. Paul's, led him to send his children regularly to that church, so that Horace Binney's religious associations were with the Episcopal Church from the first, though he did not formally join it until later. Of his attendance at St. Paul's he wrote:

"My mother's health rarely permitted her to attend church, and my father's practice perhaps never. I am devoutly thankful to him for having thus selected for me the Protestant Episcopal Church, of which I am now a member, with the fullest approbation of my judgement in all respects.

Dr. Magaw was one of my father's particular friends, and our families were intimate. I cannot say that my sister and myself were not sufficiently sensible to some of the peculiarities of his manner in the pulpit, as we certainly were to the more striking peculiarities of Dr. Pilmore, who also preached at St. Paul's, and was in some way connected with that church; but if Mr. Harris, the clerk, had sometimes to cut his eye at us, he was never obliged to go to extremities. We were, however, but goers to the church, and not members, as neither of us had been baptized. I have supposed that this was attributable to the influence of Baptist opinions or usages upon my mother."

A boy of active mind, the son of an officer of the War of Independence, it is to be supposed that even before the close of what the late John Fiske happily styled "the critical period of American history" young Horace Binney heard enough conversation on public affairs to realize in some measure that the States, too loosely united by the Confederation, were, as he afterwards expressed it, "the hope of their enemies, the fear of their friends," and destined, unless the disintegrating tendencies were speedily arrested, to become "the shame of the world." At all events, when only eight and a half years old, he was privileged to take part in a public demonstration to hail the dawn of a better day, for on July 4, 1788, he walked with the other Grammar School boys in the Federal procession, to celebrate the adoption of the Constitution by ten States, and the consequent assurance of its establishment. That this event made a deep impression on his mind may well be believed, including, in all probability, a boy's supreme contempt for the backwardness of the three States—New York, North Carolina, and Rhode Island—which still held aloof from the new bonds of union. Certain it is that throughout his life the Constitution had no

more devoted adherent, and that he always looked back with sincere gratification to his youthful share in the public rejoicings over its adoption. Seventy-five years later, shortly before the Rebellion reached its high-water mark, he wrote: "In national politics I have been a Federalist, and nothing else, since I was an adult; and have some claims to it from childhood, having, as a member of the University grammar school, walked with my class in the Federal procession on the 4th of July, 1788, on the ratification of the Constitution by the required number of States. 'What is bred in the bone'—you know the proverb. I am perhaps the survivor of the whole of that procession, and, dead or alive, I shall never meet any one of that body who shall be able to reproach me with deserting the Union, from fear, favour, or affection, or from any passion, prejudice, or hope."<sup>3</sup>

Early in 1787 Dr. Binney undertook to explore some wild lands which he had recently taken up in Luzerne County, and the exposure incident to this told seriously on his weakened constitution. Accompanied by his wife, he sought Berkeley Springs, in Virginia, in the hope of improvement, but it was too late, and on the return he died at Chambersburg, on June 21, 1787. This early loss of a father's care led to a change in the boy's life. "After my father's death," he wrote, "my mother, in the spring<sup>4</sup> of 1788, to remove me from the bad company and temptations of the city, sent me to school at Bordentown, where I lived in the family of the principal, Burgess Allison, until the month of December, 1791. My time passed pleasantly enough in this place, and not altogether unprofitably. We had two vacations, in fall and spring, when I returned home for a month. At the close

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<sup>3</sup> Letter to Dr. Francis Lieber, April 13, 1863.

<sup>4</sup> Apparently this should read "summer," as it must have been after July 4, 1788.



of each term the boys of the school presented a drama of some kind,—tragedy, comedy, or farce,—in which, from my fair complexion and light hair, I had always the part of a female cast to me. Mr. Allison had a taste for such representations, and was quite an artist in arranging the scenery and dresses. Our studies during the term were prosecuted very fairly, and we had the Delaware and a beautiful country for the exercises necessary to health. . . .

“ On my first passage to [Bordentown] in the packet, I embarked at Philadelphia on a Thursday morning, and was presented by the captain to Mr. Allison on Saturday evening. There was a high and rapid fresh in the river, and a heavy fog and little wind. I now often see at low water a collection of rocks, called the Hen and Chickens, upon which our sloop remained, with great gravity, some portion of these seventy-two hours. . . .

“ One or two of my boy’s tricks at school I will set down, that my children may the better know the manner of person I was. There was a boy at school from the eastern shore of Maryland, of whose standing with the principal, which we thought had no very good ground, some of us were a little jealous. He used to keep himself clear of our forays among the orchards in apple time, and other boys’ law, and as we thought curried favour on that and other accounts. His word was taken when ours was not, or with grains of allowance, and we owed him a grudge which in due time we meant to pay. We all slept in a large dormitory, with our trunks at our bed-heads, and Teackle’s was a large one, in which we knew he kept many little comforts that he did not share with the boys. This added to his disfavour. Upon a certain holiday, when the use of a gun was not prohibited to us, we bagged half a dozen young chickens from the master’s poultry-yard, and at nightfall put them quietly into

Teackle's trunk, which we found the means to unlock. The tidings of the slaughter soon spread, the chickens were traced to our bedroom, and we were all ordered to open our trunks for examination. Some of us resisted, and said the suspicion was an affront, which made the master all the keener. Teackle offered at once to open his, and to him the master replied that it was quite unnecessary, for nobody could suspect him, but the other boys must open. He had no doubt they were guilty, from their unwillingness to let him see. We began thereupon to open trunk after trunk, but doggedly and unwillingly, and the master looked blank enough when no chickens were found. In the end, Teackle's trunk alone remained, and he again offered, but somehow or other not quite so boldly as before, and the master then said that upon the whole he would examine Teackle's trunk also, to show his impartiality. When the chickens were all found there snug enough, under Teackle's clothes, you may imagine his countenance, and the countenances of all of us. He was so confounded that he was unable to assert the truth, and it was not until the scent of the real poachers had become cold, that Teackle got courage enough to say, and to stand to it, that he was none of them. I think that after this we were better friends with him.

“ Upon another occasion, on a freezing Saturday afternoon, a boy named Jim Gillespie and myself set off after dinner, and without leave, to go to his grandfather's, Dr. De Normandy, at Burlington. I think we rather intended to give the school a fright, and truly we did. All that could be reported of us at night was that we had been seen going to our skating-ground, on a creek of the Delaware, and the consequence was that the country was scoured. Just as we had gone to bed at Dr. De Normandy's after our ten miles' walk in the snow, and supper, one of the servants stole up

and whispered that Mr. Jo Reed had arrived on horseback. He had come either to find us or to report our disappearance. As we were not required to get up, Gillespie and I determined not to be carried home in disgrace, and we were up accordingly long before day, and off again for Bordentown. When about two miles from Bordentown Mr. Reed overtook us, and with a hearty laugh at our manœuvre told us both to get up behind him, which our fatigue consented to in spite of our shame; but we had not gone a quarter of a mile before the horse balled, and rolled down with all three of us in the snow. We then declined remounting, and Mr. Reed pushed on without us. The joke of the fall got there as soon as he did, and although all were at the door to receive us, instead of being flogged as we ought to have been, either the laugh at the accident or Sunday morning saved us at that time, and a serious admonition from Mr. Allison the next day perhaps did us more good than a flogging."

Another incident, to which Mr. Binney traced his rooted aversion to debt, occurred during his life at Bordentown.

"I always left home with a little outfit of a dollar or two, and received besides a weekly allowance of pocket-money which was paid to me by the master. This should have sufficed, but I wished to make a present to a little girl to whom I had taken a fancy, and I directed a cabinet-maker in the town to make a small mahogany box for me, for which I was to pay a dollar. The box was made and given away, and then came the day of payment without the money to pay for it. The cabinet-maker asked for it once, civilly enough, and then rather angrily, and at last I got the horrors. His shop was on the way to one of our favourite playgrounds, and both in going out and in coming in I had to make a circuit to avoid it. Many were my efforts to prevent my companions from noticing these deviations, but I always

made them with the fear of meeting the cabinet-maker notwithstanding. If I saw him in the street, I felt a shivering; and if he appeared to be coming towards me, my hair stood on end. I used to think the constable looked queerly at me, and more than once I thought from the principal's looks or remarks that he knew it, that my mother would know it, and that all would be over with me. I dreamt of the box nightly, and thought of the debt all the day long. I tried to accumulate my weekly stipend to make up the sum, but the trial was too severe. I looked forward to the vacation as my only rescue, and the happiest hour of my life was when I paid the debt with my outfit. It is from such occurrences that the character in after-life is formed for better or for worse,<sup>5</sup> and I am thankful that neither this, nor any of my boyish errors, which were many, had the effect of hardening me. The love I bore to my mother, the earnest desire I felt to have her good opinion, and the keen apprehension of her displeasure were my security against flagrant misconduct under the many temptations that were around me."

The river Delaware was the scene of Fitch's experimental steamboat trips in 1788, one of which Mr. Binney saw from Bordentown. "She had come from Philadelphia, but I know not in what length of time; and after leaving Crosswick's Creek, where she had come to at the wharf, departed for Trenton; but I heard no more of her trip. She had three paddles at the stern, which were moved by a chain passing from the neighbourhood of the cylinder near the centre of the boat. My recollection is that the movement of the paddles did not show much force, and that her motion was slow. The paddles were so arranged as to strike the

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<sup>5</sup> Writing to his son, in 1827, Mr. Binney said, "The affair of the dollar which I owed a cabinet-maker when I was eleven years old has been worth ten thousand to me."

water in succession, going into the water near the stern, and pushing from it, until they were lifted out by the machinery to return and renew the stroke. I think she required some repairs at Bordentown to keep her a-going."

In December, 1791, Mrs. Binney married Dr. Marshall Spring, of Watertown, Massachusetts, a man of the kindest nature, who at once assumed a father's place towards his step-children. Accordingly, the boy returned to Philadelphia, then the national capital, where the family remained during that winter.

"My mother's residence was on the north side of Market Street, between Fifth and Sixth, opposite the mansion of General Washington, and next to the house of General Hamilton, then Secretary of the Treasury. At that time this was the court end of the town. There was no shop or warehouse near us, and, indeed, few buildings of any kind to the west. Mr. Markoe's house, near Tenth Street, was in the country. My position at my mother's door enabled me particularly to observe the movements about the President's. I often saw this renowned man, and recollect especially his fine figure and command on horseback, an exercise which he frequently took. Mrs. Washington's matronly appearance I also recollect, once in particular as she came across the street with Mr. Lear, the President's secretary, to pay my mother a morning visit. This was not out of keeping with her general manners, which were not stately; but there was at that time much more ceremony and state in the community generally than at present, and the incident alluded to probably struck me and fixed my attention. The prevailing ceremonies at that time were the remains of colonial usage, adopted from the mother country. General Washington's coach and six were sometimes got up, and his coach and four more frequently. Mr. William Hamilton's post-chaise

(‘ Billy Hamilton’s poshay’) and four, the boys in scarlet jackets and hunting caps, was his frequent conveyance to the city from the Woodlands. . . .

“ In April, 1792, when my mother’s family were to remove to the house of Dr. Spring, in Watertown, about seven miles from Boston, I was permitted to go there by sea, and it was my first acquaintance with it. I well recollect that I had a severe seasoning, for the voyage occupied a fortnight, one-half of which was a gale of wind; but after three days of sea-sickness, I enjoyed the passage vividly, and I have now on my mind, with the distinctness of a picture, Holmes Hole and Tarpaulin Cove, in Martha’s Vineyard, where we cast anchor to obtain refreshments, Nantucket Shoals, and the dashing of the waves on what I believe is called the Great Shoal, the coast of Cape Cod, and, above all, the beauty of Boston Harbour, the spires of the town, Beacon Hill, and the whole country sending back the bright rays of the rising sun as we entered on a glorious May morning. It seemed as if town and country, the hills, the uplands, and the islands, had all arisen with the sun to offer their joyous thanks to the Creator for the returning light.

“ I arrived before the family, and passed a couple of days in Boston, at the house of Mr. Lucas, one of my father’s friends, who came to the packet at Long Wharf for me, and as we were going up, stopt a gentleman named Mackay, and told him I was Dr. Binney’s son. Captain Mackay brought the blood to my face by saying that he hoped I would be a better man than my father, but it went back upon his adding that I might be satisfied if I was as good.”

Soon after reaching Mr. Lucas’s the boy went out alone for a walk, not reflecting that the streets of Boston, unlike those of Philadelphia, had a character of their own, and not one borrowed from a chess-board. Interested in the novel

sights, he went on without noting the turns, until he finally realized that he did not know the way back. Boy-like, he had forgotten to ask Mr. Lucas's house number, or even the name of the street, and now he was ashamed to inquire where the house was, thinking that every one would say he was a silly Philadelphia boy, who did not know enough to find his way home. The farther he went, the more astray he felt, but presently he remembered that in the morning, as he came up from Long Wharf, he had seen a high monument, so he asked some one where the monument was, and was told it was on Beacon Hill. He went there, and making out Long Wharf, took his bearings and went directly to it. Once there, and remembering the way he had gone in the morning, he easily found the house again, having asked no questions except about the monument.<sup>6</sup>

"On Saturday after my arrival, one of Dr. Spring's medical pupils came for me, and took me to the mansion house at Watertown, where I was received by Mrs. Gray, Dr. Spring's sister, a venerable lady who had been for some time resident in his family, and her daughter, Polly Gray, a very sprightly and intelligent woman, who afterwards married Barnabas Bidwell. I perceived, by the order of things on the night of my arrival, that Mrs. Gray was a very religious woman, the evening being passed in some degree as a preparation for the Lord's day. The sewing and knitting were put away at sunset, and either books or sober conversation employed the remaining hours. On the next day we went to meeting, as it was called (a Congregational church), morning and afternoon, and immediately after sundown what was my dismay at seeing the sewing and knitting resumed, and pretty much the usual course of a

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<sup>6</sup> See Gail Hamilton's *Life in Letters*, vol. ii. p. 711.

week-day evening pursued. I did not dare to express my surprise otherwise than by my looks; but I was soon made to understand that the Lord's day was thought by Mrs. Gray to begin on Saturday evening and to end with sunset on Sunday. She was, I believe, the widow of a clergyman who had been settled at Kittery, in Maine, where this opinion was common, as, indeed, it was, and I believe still is, in many parts of New England, but after my mother's arrival there was no sewing or knitting on Sunday evening, nor, from regard to Mrs. Gray, any on Saturday evening. For some years, however, after my removal to Watertown the waggoner's team was at rest as soon as the sun was down on Saturday evening; and I could generally tell when the sun was down on Saturday by the sound of the wheels upon the stony road before Dr. Spring's house. Before I left Watertown to return to Philadelphia, Saturday evening had lost its distinction in the part of Massachusetts where I lived, and I am not sure that Sunday evening had quite regained hers.

“Very soon after my mother's arrival Dr. Spring took me to a boarding-school near Medford, about six or seven miles from Boston, and as many from Watertown, of which a Mr. Woodbridge was principal. I was already prepared to enter the Freshman class at Cambridge, but was too young. I was taken there to grow older, rather than to be fitted for college. The house and grounds appropriated to this school were formerly the property and residence of Sir William Pepperill, and resembled some of the old manorial residences in England. The mansion house was large and stately, very ample for the accommodation of large classes of boys and girls, for there were both departments in it, and the classrooms of the boys were in a large summer-house in the garden, built with the pretensions in some degree of a Grecian temple. The gardens were in the ancient style, the walks



straight, the box borders and some of the trees trimmed as is now very common in Italy, and flowering shrubs and fruit-trees planted about in great profusion. It was to the eye a very attractive place, but I was not destined to remain there.

“On the day after my arrival I was called up by Mr. Woodbridge to recite a Greek lesson in the Acts of the Apostles. I ought to premise, in excuse of myself, that for a year before I left Bordentown I had passed for the best scholar at that school. I was grinder to several of the boys who were older than I was, and I thought myself quite strong in the Greek Testament. I had been quite frequently flattered by being told so, and I certainly believed it. I began my translation to my new master with some confidence, but had not proceeded far, when he told me I was wrong, and gave what he deemed was the proper version, to which I replied that I was right, and he was wrong. He immediately asked, ‘Is this your Philadelphia politeness?’ I answered, ‘It is my Philadelphia Greek, sir.’ This, to be sure, was very impudent on my part; but I recollect feeling at the time that my master was wholly ignorant of Greek, or he could not have translated the verse as he had done. I do not recollect how the affair ended in the recitation-room, but it did not end in such a way as to make me forget the occurrence. None of the boys in the school were as far advanced as I was, and I therefore felt myself too much above them to take counsel of them in the matter; I took my own counsel. While I was pondering my course, the boys were called to dinner in a parlour by themselves. The girls were in another parlour. It occurred to me that I could not stay at that school any longer, but I did not readily perceive how I was to get away, for Dr. Spring had returned home after leaving me, and might not perhaps come to see me for a month. Even the way to his house was unknown to me, as I had

never gone over it but once. There were difficulties both ways, staying and going, which I chewed more than my dinner; but while I was at the work I observed that a ragged leg of mutton, which had been terribly hacked, was brought from the girls' table and placed on the boys' as a supplement to their own scant supply. This settled the point. I had not been accustomed, as I thought, to eat after the girls, and I liked the first instance of it even less than Mr. Woodbridge's Greek. I accordingly proceeded forthwith to my sleeping-room, tied up in a handkerchief the few clothes I had brought, and walked with it in my hand through the dining-room to the front door, and from thence to the high road. Nobody questioned me, though all saw me. It was then about two o'clock, and was beginning to rain, but it was impossible to go back, and I therefore proceeded through rain and mud, guessing and asking my way, until I got with my pack to Dr. Spring's house. My poor mother was, of course, much grieved to see me, and feared I had been turned away; but I soon quieted her as to this, by saying I had come away of my own accord. The inquiry then followed as to the cause, and I never shall forget the suppressed laugh and the convulsive shake of Dr. Spring when I told my mother that it was because Mr. Woodbridge did not understand Greek. There was something so irresistibly droll in a flaxen-headed boy of twelve disposing of a school-master's reputation at a slap, and leaving him in contempt to trudge home in the rain and mud, that after a little while my mother joined in the laugh, and then I forgot all my trouble and told of the leg of mutton. It was arranged the next day that Dr. Spring, during his morning's drive, should call for my books and explain why I did not return; but how he explained it I never asked or knew. I think that it would have ruined me had I been compelled to return.

“ I was then placed under the care of a clergyman at Menotomy, now called West Cambridge, the northwest parish of Cambridge, and there I remained until July, 1793, when I entered Harvard College. The year I passed at Menotomy was one of the brightest periods of my life. Mr. Fisk, the clergyman, was a most amiable man, and I was his only pupil. I lived about a furlong from his house, with a motherly woman, whom everybody called Aunt Polly Cook, the daughter of the former clergyman of the parish, and who watched over me and loved me as her own child. In front of the houses,—Mr. Fisk’s and Aunt Polly Cook’s,—the only houses in that part of the village, was a pretty lake, about a mile long and perhaps half a mile wide, full of fish, and frozen half-way to the bottom during the winter. Mr. Fisk, having but a small salary, cultivated a few acres about him, planted and ploughed his own Indian corn and potatoes, and sowed and cut his own rye, and between riding horses to plough, cutting my fingers with the sickle, digging potatoes, fishing and skating, I made out to grow old enough to go to College, doing little more with my Latin and Greek than bowing to them once a week to keep up the acquaintance. I ought to say, however, that I was terribly frightened in the spring by the prediction of a poor consumptive sister of Miss Cook that I should be rejected by the examiners; and shortly after she died. I knew that she had uttered the prediction in a moment of irritation, because I had shattered her nerves by slamming to the door; but still it was a prediction, and she was now dead; and the dying are thought to look further into futurity than other people. It frightened me, however, into hard study, as perhaps it was kindly intended to do; and with two or three months of good work, I not only got in, but with credit.”

## II

## LIFE AT COLLEGE AND AS A LAW STUDENT

1793-1800

**H**ARVARD COLLEGE in 1793 contained but few professors and tutors, and less than three hundred students. The buildings were Massachusetts, Harvard, and Hollis Halls and the Holden Chapel. The president, Joseph Willard, lived in the Wadsworth house, and there Horace Binney was lodged, as one of the family circle, for the first three months of his college life. Dr. Spring's residence was but four miles away, and at first the boy must have been there frequently, during the period of his mother's last illness. She died on November 9, 1793, at the age of thirty-seven.

“Among the most grateful recollections of my youth,” he wrote, “is that of tending her dying bed and soothing her intervals of exemption from extreme pain with some simple airs on the flute, which I was then learning. She employed me about her in many little offices for her comfort that a boy could perform, and so spoke of me to her friends as to give me quite a character in the neighbourhood. Alas! that I was to be deprived of the happiness of this relation in after-days, when I should have better appreciated it, and when I should have better known her, though it would have been impossible for me to love her more than I did.”

The following June was saddened by the death of Horace Binney's only remaining brother, John, a boy of nearly ten years, and of remarkably bright mind. Of Dr. Binney's six children but three were now left.

After Mrs. Spring's death her children's nearest friends were their step-father and their aunt, Mrs. Nicholas Brown, of Providence. "I doubt," wrote Mr. Binney, "whether men in general love their own children more than Dr. Spring loved us all. The proofs of it recollected by me are innumerable. His house was our home while he lived. He constantly watched me, and often visited me while I was in college, gave me such advice as a father would give to his own son, took the highest satisfaction in every report of my improvement, and omitted nothing that he thought would make me better or happier. . . .

"My aunt Avis was a person of remarkable understanding, and as nearly perfect as human nature admits of. She was the bosom friend of my father to the time of his death, and upon that event she transferred to his children, and continued to them during her life, the vivid affection she had borne to him. . . . My winter vacation while at college was never spent so agreeably as at her house, when I was from fourteen to seventeen years old, and my aunt between fifty and sixty; yet frequently I was the only inmate with herself and her domestics. I was a stranger to restraint and equally so to *ennui*, and I was always learning or enjoying while in her presence. I hope I learned some things from her that I never can forget. . . .

"I was always within reach of domestic counsel; but with all this I recollect college as a perilous place, and call to mind perhaps half a dozen forks of the road, where, by the providence of Heaven, I took the right path, when the other would probably have led me to ruin. In one instance my safety was owing to the suggestion of one of the most profligate young men in college, who was about a year after expelled on account of misconduct, and who seems to have given evidence in my case of some remains of virtue, which

with due care might have saved him. . . . It was well for my virtue that I was ambitious, for my desire for distinction in the class was such as to keep me straight. . . . My appetite for study was so great that upon one occasion I remained at my chambers during an autumnal vacation, the solitary tenant of Hollis Hall, instead of going to Dr. Spring's, where I was always happy, and studied every day of it fourteen hours by the clock."

This vacation work was not undertaken from fear of falling behind his classmates, but from a consciousness that a thorough education was unattainable by the ordinary routine of study; and this consciousness and the voluntary exertions to supply the want are even more noticeable, as showing Horace Binney's early development, than the number of hours which he devoted to the end in view. That much was lacking in the college course of that day there can be no doubt. There was practically no teaching at all. Lessons were set, but, whether recited well or ill, little comment or explanation was made. The knowledge acquired was what the prescribed books contained, or what the student might gather for himself from such other books as he had access to. Even English composition gave but a limited chance for original work, as but one subject was given out at a time for the whole class. The subject might, however, be treated in either prose or verse, and there were few who did not attempt the latter, which indicates a more general poetic ambition than prevails among the undergraduates of to-day.

Among his classmates (the class numbered fifty-four at graduation) were Samuel Farrar, afterwards a tutor at Harvard; William Jenks, afterwards Professor of Hebrew and English Literature at Bowdoin; William Ladd, James Richardson, William Merchant Richardson, afterwards a

member of Congress and ultimately chief justice of New Hampshire; Asahel Stearns, also a member of Congress and University Professor of Law; John Collins Warren, afterwards Dean of the Harvard Medical School and member of many learned societies in Europe and America; and Daniel Appleton White, for many years judge of the Probate Court of Essex County, Massachusetts. An intimate friend, though of the class of 1796, was John Pickering, afterwards eminent for his legal and scholastic attainments. Early in 1860, when Judge White and he were the only survivors of the class, Mr. Binney wrote: "How well I recollect Farrar, that gentle, equable, erect, self-poised, benign form and figure and face, all foreshowing his pure and firm character in life; and Ladd, too, oftentimes boisterous, rough, and disagreeable, but always hearty and intelligent, and since so steadfast and strong, too, in his impracticable wish to banish war from the world before its time comes. I knew little of the Richardson who was afterwards chief justice of New Hampshire, and something, I know not what, kept us apart; but James Richardson was true, cordial, gentle, with a most pure mind and cultivated taste, too."

Of college friendships the closest was with White, a friendship unimpaired by the fact that the two were competitors for the highest honors at graduation. "I could never," wrote Mr. Binney, "gain an advantage over him in anything, and he was in general more mature than I was. I may perhaps be excused for saying that he was some years older. He was frank, manly, kind-hearted, and was as ready to applaud me as any one in the class. I have no recollection of White that is not full of satisfaction to me, and I believe that he is now in heart and affections what he was when young."

Writing to Judge White's son, nearly sixty-six years

after graduation, Mr. Binney said, "During our college intimacy he thought of himself very constantly, to bring him or to keep him to the internal standard that was his pole-star; but never in connection with the design or desire of excelling another, the common stimulus of young men at college, and the root of a thousand bitter fruits. This may account for some mutual manifestations during our college intimacy. Whether I owe it to him, or it was an hereditary seed, I do not know, but from my earliest day to the present I have been in perfect sympathy with your father in this respect. There was a trial examination of us two, before the whole class, near the close of the senior year, and without any previous intimation to either of us, or to anybody that we knew of. It was by Professor Pearson, and upon Burlamaqui's two volumes on Natural and Political Law. He began with your father, who was the oldest by three or four years, and to every question, perhaps a hundred, which Professor Pearson put to him on one of the volumes he answered fully and accurately. And I was delighted, as usual, with his performance.

"Had I known what was to follow, I should perhaps have been disturbed by thinking of myself; but when my name was next called I was in the calmest temper for responding in like manner upon the other volume. Had I envied your father the least in the world, his success might have over-excited and flustered me, and this, I am sure, would have pained him more than anybody. At the end of my examination the class was dismissed, and then we first knew, as the class did, Dr. Pearson's design. The trial and the result were the things desired by us both, and so it was with him always. It would have been unjust to say there was competition between us, any more than there is between two pretty fast walkers side by side, who are talking and com-



muning with each other all the way, and mean to arrive side by side at the boundary.”<sup>1</sup>

Of college amusements Mr. Binney has left no record, but he was a member of the Institute of 1770 and one of the founders of the Hasty Pudding Club. In Senior year he was president of the class, and his classmates generally thought him their best scholar. The faculty thought otherwise, but deemed his position so nearly equal to the first as to call for the creation of a special “part” (the English oration, never before assigned to any one except the valedictorian) at the Commencement of 1797, instead of that usually assigned to the second place. The oration itself he regarded as a failure, owing to its topic. Looking back on his college course, after forty years of active life, he wrote:

“It does not now occur to me that I ever missed a recitation, or the chapel services at six in the morning, winter or summer. Much that I acquired there is in one sense lost, and can now never be regained, but the unfading art which I acquired at college was that of study; and if the acquisitions of knowledge I there made by it are faded or fallen from the surface, I may hope that they have still fertilized the soil of my mind, and certainly the art or faculty of study has never left me. Perilous were many of my passages during those four years, but I have no recollection that I ever did a thing to make my friends blush, and their praises when I left it gave me courage to begin my first step in the world.”

While in college Horace Binney occasionally visited the court-houses in Boston and Cambridge, and listened to some of the ablest forensic orators of the day. He was particu-

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<sup>1</sup> Letter to Rev. W. O. White, May 11, 1863. A letter to Dr. Lieber, December 24, 1867, alludes to this incident, adding, “The class saw that it was an examination only for the first honour, and it was a drawn match.”

larly interested in the trial of one Claflin, indicted of blasphemy, and defended by Theophilus Parsons, between whom and James Sullivan, the Attorney-General, occurred "an exhibition of intellectual gladiature of the brightest kind."

"My imagination fired at the spectacle of this *omnis homo*, as well furnished in theology as in law, and of as much repute for Greek as for English, Socratic in his subtlety, and not otherwise in his careless dress, his purple bandana handkerchief curled loosely over his neckcloth, and his reddish-brown scratch something awry, he all the while pouring from under it the doctrines he had culled, and weaving them up with the subtlest ingenuity, to make a covering broad enough for Claflin. It was a glory of the bar. But the stiff old statute was too much for him. I think I recollect a part of Claflin's sentence, so strange to the ear of a Pennsylvania lawyer,—that he should sit an hour *upon* the gallows, with the rope round his neck! Barring the rope, I should have been willing to sit there for two, not for blasphemy, nor alongside of Claflin, but to hear a repetition of Parsons."<sup>2</sup>

Despite his admiration for Parsons's eloquence, the young man's own inclination was to his father's profession. During his senior year he attended Dr. Warren's lectures on anatomy and read several medical works, but Dr. Spring strongly dissuaded him from medicine, saying that if he chose any of the learned professions, it ought to be law. To the youth of seventeen success in that calling seemed too uncertain, and hence, on reaching Philadelphia, in November, 1797 (the prevalence of yellow fever there having kept him in Providence for some months after his graduation), he sought a

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<sup>2</sup> Leaders of the Old Bar, p. 17.

position as apprentice with Cunningham & Nesbit, then extensive shipping merchants. He afterwards admitted having done this without much consideration and mainly because he knew nothing against a mercantile career. Fortunately the counting-house was full, and he turned to law, apparently as a last resort. That the final decision was in a measure dictated by chance was due mainly to the circumstances of his position. He had no relatives in Philadelphia, nor even any friends who knew him well enough to advise with reference to his temperament and qualifications. His guardian, Dr. David Jackson, belonged to the profession from which Dr. Spring had already turned him. He had, it is true, a moderate patrimony, but he must have realized that, beyond that, all that the future could offer would have to be won by his own efforts, and at the same time that his habits of industry and application warranted a reasonable hope of success in whatever he might attempt.

The step once taken, doubt and hesitation vanished, and he bent all his energies to the task before him. He esteemed himself particularly fortunate in his preceptor, Jared Ingersoll, to whom he afterwards devoted one of his sketches of the "Leaders of the Old Bar," and whose name, he said, "I can never mention without the profoundest veneration, as my master and guide in the law." His method of study in Mr. Ingersoll's office was undoubtedly the same which, in another of those sketches, he described as that which Edward Tilghman had pursued. "[This], which may be called the old way, is a methodical study of the general system of law, and of its grounds and reasons, beginning with the fundamental law of estates and tenures, and pursuing the derivative branches in logical succession, and the collateral subjects in due order, by which the student acquires a knowledge of principles that rule in all departments of the science, and

learns to feel, as much as to know, what is in harmony with the system and what is not. . . . The profession knows [this] by its fruits to be the most effectual way of making a great lawyer.”<sup>3</sup>

Of his life as a law-student, he wrote: “My office life with Mr. Ingersoll was a very happy one. I endeavoured to learn my profession accurately, and after yielding in a few instances, I afterwards strenuously resisted the social temptations which on all sides assail a young man in a large city, especially if he can play pretty well on the flute and sing an agreeable song, as I could. I had not spread my sails to this gale for more than a few months before I perceived the danger, and from that time I so reefed them as to make pretty safe weather. When I look back, however, upon this period of my life, uncounselled as I was, and without family friends near me, committing faults, but retaining my preference for virtue amid many bad examples, I feel the deepest gratitude to the Providence that guarded me, as well as to the maternal friend at a distance, whose former counsels were ever recurring to me, as the whisperings of an attendant genius.

“Two of my fellow-students were Mr. Wallace, who afterwards married my oldest sister, and Mr. John Sergeant. A third friendship was soon after, from professional affinities, contracted with Mr. Charles Chauncey. They contributed to keep up my own standard of rectitude, and in many things to raise it. The contentions of professional life and the struggle for personal success may sometimes have given a momentary disturbance to the connection of those of us who became devoted to the bar, . . . but it rarely happens to three individuals of the same profession to live so long in

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<sup>3</sup> Leaders of the Old Bar, p. 50.

unbroken union as Mr. Chauncey, Mr. Sergeant, and myself.”<sup>4</sup>

The Law Association of Philadelphia possesses a record of this friendship, in the following document:

I, Horace Binney, of the city of Philadelphia, do hereby promise to pay to John Sergeant one-half of the first fee I shall receive as attorney in any court of the State of Pennsylvania, or any other State, as witness my hand and seal this 30 May, 1799.

Attest:

HORACE BINNEY. [SEAL]

J. B. WALLACE.

The history of this note is now wholly lost, and one is left to conjecture the circumstances under which it was made, what could have been the unexpressed consideration, and whether the note was ever presented for payment. One thing only is certain,—that the fee, when it came, was not a large one.

Closely as Mr. Binney pursued his law studies, he did not do so to the exclusion of the broad culture for which he had striven at college, but kept up an extensive outside reading, both of the classics and of general literature. It was at this time, too, that he made the acquaintance of Judge Bushrod Washington, to whom the third circuit was assigned. Their first meeting and the intimate friendship to which the judge soon admitted him are recorded in his sketch of the judge's life, written in 1858, as an expression of the writer's "love for his virtues and admiration for his remarkable judicial qualities."

Mr. Binney's older sister, to whom he was devotedly attached, was with him in Philadelphia during most of his

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<sup>4</sup>This was probably written about 1839 or 1840. A few years later, to Mr. Binney's intense regret, a coldness developed between him and Mr. Sergeant, continuing until the latter's death in 1852.

life as a law student, and his first experience (not the only unfruitful one) in sitting for a portrait was due to her request for a miniature by a certain artist, eminent for "beautiful" pictures.

"I told her my cash was low, and so put her off. In about a fortnight I went to the artist, and asked him to let me sit to him. He went on grandly, telling me I need not look till he told me. In the course of the sittings, he called in his wife, who looked at me, and looked at the picture, and exclaimed, 'What a charming likeness! How striking!' A Frenchman, an acquaintance of the painter's, also came in, looked, and cried out, '*Mon dieu, quelle ressemblance! Elle est frappante. Vraiment le portrait est beau, sans être flatté.*' After some further sittings the painter told me I might look, and I did; but, it being my first portrait, I did not know what my likeness ought to look like, to myself of myself. I paid my money, and took the miniature away. Some days afterwards I said to my sister, 'You have several acquaintances in Boston, tell me which this is,' showing the miniature. She looked, and turned up her eyes to recall; looked again, and turned them up again; looked down and shut them, to think the better; opened them and looked again at the miniature, paused a minute or two, and then said, 'Upon my word I don't know. I don't think I ever saw him. Who is it? It's very handsome, but it is impossible I should know him.' I took my handkerchief from my pocket, moistened it with my lips, and rubbed the face out. 'My dear sister,' said I, 'the painter's an ass, and his wife and French friend are——.' I then told her how I gave my money, and what I got for it."<sup>5</sup>

In the summer of 1799 Mr. Binney visited his relatives

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<sup>5</sup> Letter to Dr. F. Lieber, November 30, 1861.

in Watertown and Providence, and another outbreak of yellow fever in Philadelphia kept him away until November. To this period belong the earliest of his letters now extant, written to his sister there, to whom also he wrote quite frequently after her return to Watertown the next year. The letters are somewhat in the essay style then prevalent, give evidence of extensive reading, and, though not descriptive, they express in a lively way the writer's views on various topics, showing the cast of his mind at an interesting period of its development. Two letters to his classmate White, written soon after the return to Philadelphia, also throw some light upon Mr. Binney's habits and temperament at that time.

PHILADA. December 8th, 1799.

MY DEAR WHITE,—

Did I not perfectly recollect that while at college you were remarked for great temperance of disposition, I should absolutely dread the consequences of this performance, after so glaring a violation of promise. "I will write as soon as I arrive at Philadelphia," were my words which accompanied the last pressure of our hands at Craigie's gate. "Rest assured of a letter as soon as I get home," was my last address when in your chaise for Worcester; and yet, by heaven, I have delayed it for a month. Many a time have I chewed my thumb, for want of a better occupation, when I could have written a folio to you; and oftener, to my shame be it confessed, has my employment been worse than thumb-chewing, when it could have been substituted for letter-writing. You know what Solomon says,—there is a time for these things,—and I have become so perfect a methodist in the observance of times, whether by reading the Bible or Coke I cannot tell, that, as a world could not have bribed me to the performance of my contract two days ago, so ten worlds should not bribe me to delay it two days longer. I confess my error, and turn from my ways. Randolph's confessions were not more precious, and his vindication was not half so just. . . .

In the political way I have nothing to amuse you; we are just getting into *blast*, but our *ore* is not yet running. Some weeks hence, by the time you get this letter and can have assured me that you are not offended by my long silence, we shall have *cast* something worthy your *proof*. The President in his speech, which I had the satisfaction to hear, has made no communication of novel fact, but has only commented on one or two circumstances which have occurred during the recess. The defects in the administration of justice by the courts of the United States are stated by lawyers to be numerous and aggravating; he gave it in charge to Congress not to pass them over this session, the just punishment of crimes and the proper protection of innocence depending on an alteration. This, and a Bankrupt law again brought on the *tapis*, will afford exercise for the *gown* in the House, and speculation for it without; in this latter scheme I feel almost a personal interest, having suffered hitherto by the egregious looseness of the Pennsylvania system. I fear, however, it may be placed, where all those who oppose it should lie, *under the table*.

As to poetry, history, mathematics, logick, and ethics, I know them only in connection with law; the two last are, to be sure, the basis and superstructure, and I ought to know them well, good law being built on morality, and reared into system by deduction; but the three others, except so much as I meet of the one in Coke upon Littleton, and of the second in Pickering's statute book, I have greeted to no amount since I left college.

As to friendship for you, if my law knowledge were commensurate with it, there would not be a sounder lawyer or a better friend on the continent than

H. BINNEY.

The interest which, as this letter shows, Mr. Binney took in the proceedings of Congress was not unnatural. The then House of Representatives, as he afterwards wrote, "was perhaps never exceeded, in the number of its accomplished debaters, or in the spirit with which they contended for the prize of public approbation. It was the last which convened



in this city, and furnished a continual banquet to such as had the taste to relish the encounter of minds of the first order, stimulated to their highest efforts, and sustained by the mutual consciousness of patriotic motives.”<sup>6</sup> The speech which probably impressed the young law-student most was Marshall’s great defence of the act of the Executive in surrendering Jonathan Robbins to the British authorities (the first instance of extradition by the United States), for even seventy-five years later Mr. Binney alluded to it with enthusiasm.

Had Philadelphia remained the capital, greater familiarity with public life might possibly have made Mr. Binney’s views of it different from what they soon came to be; but with the removal of the seat of government his personal interest in its doings naturally declined, and public life lost for him whatever attraction it may once have had.

The next letter seems to refer to some suggestion of White’s as to a return to Cambridge for purposes of study.

PHILADELPHIA, Jan. 28, 1800.

MY DEAR FRIEND,—

I hate apologies, and therefore will not say why I have not answered you ere this. Nothing, however, but necessity could keep me from doing that for which I procure so rich a return. This is a very strange world. I do not like it so well as I did three weeks ago, and therein consists its singularity. To-day I am in tune; not one chord in my system that does not vibrate music. I could shake my enemy by the hand, and hope sincerely that he was well. The second day it is not so fair. There is a fog; some of my strings fall; and, take me all together, I am out of tune. Still, if you touch a note at a time it is not absolute discord; it gives a thin simple sound that is neither one thing nor another. “The third day comes a frost.” What

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<sup>6</sup> Eulogy on Chief Justice Marshall, p. 51.

had sunk a little in the damp of yesterday is brought up; what was sufficiently high before, cracks. I am so thoroughly strained that touch me and I give way. No finger so delicate as to get aught but discord. I pass my friend in the street, or, like the Levite, go on the other side. In fact, I have been troubled with the spleen,—a long fit, not over yet, which you will learn before I get to the end of my story. The fault then, say you, is in the man, not in the world; but then the world makes the man. It has made me feel like a fool for three weeks, and therefore I do not like it so well as I did three weeks ago. Q. E. D.

You opened a fountain of feeling by your letter which for two years and a half I have been endeavouring to choak. When I left college it was with regret tempered by hope. I looked on my habits with affection. They had been reared in a situation which, compared with the great world, was a solitude. They had incorporated with themselves some feelings which were to a great degree ascetic; and when I looked forward to the outrage which they must necessarily receive in the intercourse of dissipated society, honestly I confess to you 'twas with sorrow. Ambition, however, with all its combined power, knew how to weave a spell that could lull this sorrow. Its eye was fixed on fame, or something which had its features, consequence in the world; and between this fame, this consequence, and the *otium cum dig.* of my former life, I was not slow to make a preference. When the choice was made, I considered it a duty to controul every sentiment that could unsettle it, and altho' they oftentimes would arise, yet it was a kind of Northampton insurrection, that fell at the appearance of its enemy. Since my probation thus far, I have been inclined to think my decision was just; but even when pleased with the present, memory can still sigh at the past, and wish that its joys could have been consistently prolonged. When I have the spleen too,—as I have said before, it is sometimes my companion,—these lost scenes have their brightest colours; they derive additional beauty from the distance, and in spite of myself do not unfrequently raise a wish, a kind of half-formed determination to see them actually once more. With such dispositions, then, it is not surprising

that your letter had great weight. I allowed it to carry me with it every length, until, to use a sailor phrase, I was "brought up by my cables." My cables are reason and prudence; by the one I was taught my incapacity to fill the office; by the other, that if I once entered it, I might not be able to leave it in good season. Believe me, my dear White, I can sufficiently estimate the advantage that would be derived by a recluse station for the next two or three years, and especially by a renewed connection with you and with my worthy classmate Farrar. But my friends with me have formed my arrangements, and it will be well to observe them. I shall continue my official vassalage until the next summer, endeavour to gain admittance to our Philada. bar, and then make decisions anew; the direction or nature of which at present I do not see. If I am thrown to the eastward, let the means be what they may, I shall bless them; and let it be at any less pleasant point of the compass, as a lawyer I shall conceive it an arrangement of heaven, and I must say, "Lord incline my heart to keep thy law." At all events I shall sally from Philada. during the dog days, and shall in all probability visit my friends in New England. I can then commune in person and in spirit with you; while I am there it is my general passover, a "feast of reason and a flow of soul." Mention me in terms of very respectful esteem to my friends J. Bartlett and Farrar, and believe me most truly

Your sincere friend,

H. BINNEY.

The uncertainty about his future place of residence is also alluded to in a letter to John Pickering, of about the same date, but does not seem to have lasted long, for Mr. Binney opened an office in Philadelphia almost immediately after his admission to the bar, which took place in March, 1800. "No attention," he wrote, "was paid at that time to the qualification of age, or, indeed, any other. One of my examiners, I recollect, did not know what was the general issue in an action of trover, and he knew about as much of law in general."

## III

## FIRST YEARS AT THE BAR—MARRIAGE

1800–1807

“AT the time I thus came to the bar,” wrote Mr. Binney, “the eminent men of the profession were Edward Tilghman, William Lewis, Jared Ingersoll, William Rawle, William Tilghman, and Alexander James Dallas. They then engrossed the whole important business of the city, and the young men of the bar were none the worse off for growing up under them, though they had to grow up in the shade. I thought the apprenticeship both hard and long. Now that I look back upon it, it seems to have been short.

“The Supreme Court then consisted of Shippen, chief justice; Yeates, Smith, and Brackenridge, justices. The chief justice was a gentleman of the old school, of benign temper, of good learning in the law, and of an uncommon mass of it in regard to what is called the practice; but either his natural temperament, or his advanced age when he came to that office in 1799, made him rather too easy and accommodating for the requisite despatch of business. He wanted the love of command, or the faculty of efficient superintendence and control, necessary to the presiding officer of such a court. He inclined to let things take the course which others gave to them, if it was not obviously wrong. Yeates was a very good lawyer, and a first-rate Pennsylvania lawyer; that is to say, he knew better than any on the bench or at the bar what had been deemed to be the law in Pennsylvania. He walked, however, by what has been called the ‘ balustrade

of cases.' He was a great collector, a voluminous common-placer before modern indexes had saved that labour and destroyed all the fruits of it in the bud; a careful observer, a deferential follower of all that had been decided; but by the force of his own mind he was in the habit of doing little, and perhaps unjustly was thought unable to do much. If you gave him a case you had him, unless he could give you as good or better the other way. He was also kind and courteous, though without the refinement of manners which belonged to Shippen. Smith was defectively educated in the law, but by great industry had amassed a considerable knowledge of it. He was, like Yeates, a case lawyer, inferior, however, to him in the extent of his learning, and even less inclined to leave for a moment the support of adjudged cases for that of principle,—a good fault in moderation, but a gross one in excess. He was rough and bearish in his manners, uncouth in his person and address, and was incapable of raising the skin by a reproof without making a gash. But he was a truly honest man, as far as his prejudices, which were probably unknown to himself, would permit, and under that shaggy coat there was a kind and warm heart. He had been a deputy surveyor, and from this perhaps got the habit of always moving in a right line,—that is, the shortest line to his point,—and this contrasted broadly with the waving lines of the chief justice and Mr. Yeates, though, if he had had more knowledge of law and the general affairs of men, his disposition in this respect would have been best for the bench and the public. His notions of ceremony were very strange, and with his utter inability to dress, or make a bow, or to do anything else like other people, made him in some situations irresistible. Mr. Rawle upon one occasion invited some of the bench and bar to dine with him at Harley, his summer residence near the Falls of Schuylkill,

and I was one of the number. It was a day in July, excessively hot, and the Ridge Road dusty to suffocation. I went with some of my young friends in a hackney coach, and we overtook Judge Smith on the road. He was on horseback, in enormous boots that came above his knees like a fisherman's, a cocked hat exposing his whole face to the fiery sun, and a full cloth dress which had been black probably when he set out, but when we saw him was most dirty drab. Some fifteen minutes after our arrival he came into the saloon where the company had assembled. His hat was then in hand, but on his head was a mass of paste made by the powder and pomatum, a part of which had run down in white streams upon his face, as red in all the unplastered parts as a boiled lobster, and his immense boots and spurs, broad-skirted coat, and the rest of the appearance I have described, made him the most extraordinary figure for a summer dinner that I have ever seen; but he did not appear to think that he was otherwise than he ought to be for the honour of his host, or for his own comfort. To this person I owe more real civility and kindness, both at the bar and elsewhere, than to any other judge of the court until the time of William Tilghman. I know, moreover, from the representation of one who knew him better than I did, that he was susceptible of the noblest emotions of generosity and benevolence.

“Brackenridge's appointment was the greatest legal blunder that Governor McKean ever made. He despised the law, because he was utterly ignorant of it, and affected to value himself solely upon his genius and taste for literature, both of which were less valued by every one else. He once said to me, as I was standing by his chair on the bench, ‘Talk of your Cokes and Littletons, I had rather have one spark of the ethereal fire of Milton than all the learning of all the Cokes and Littletons that ever lived.’ The mis-

fortune of the bench was that he had not a grain of the learning that he undervalued, and that his fire, such as it was, was not ethereal. He hated Judge Yeates to absolute loathing. If Chief Justice Tilghman had not sat between them, I think that Brackenridge would sometimes, at a later period of his life, have spit in Yeates's face, from mere detestation. Yet this was but a proof of his own brutality, for Yeates was vastly his superior in everything that deserves praise among men, and never, that I heard of, gave him any cause of offence. It is not certain that Brackenridge was at all times sane, and he would have been just as good a judge as he was if he had been crazy outright.

"I once saw him charge a jury with his coat and jacket off, standing in his bare feet, with his boots beside him, for he had no stockings at that time; and in this cause, in which I was of counsel, and his charge was in favour of my client, who succeeded, I saw what satisfied me that his honesty as a judge was no greater than his learning.

"The Common Pleas at this time was under the presidency of John D. Coxe, and the only lawyer in it. He was a sound lawyer and a very honest man, a little too much disturbed by his doubts and his talent for making distinctions, but on the whole very safe, very patient, and very well tempered. I could tell when a doubt had seized him, by the manner in which he pulled one of his eyebrows,—as if he could disentangle the web by straightening the hairs.

"These were the men before whom I had to make my début; and though for some years I had little to do before them, I was so kindly treated by them in all I had to do, that it is quite agreeable to me thus to have recalled them, and I believe without a feeling of resentment against the worst of them. For six years after my admission my porridge would have been very insipid if I had had to buy my salt with what

I had made at the bar. My employment consisted mainly in waiting upon the courts, and thus professing my readiness for what might turn up; and I have often recommended this to young men as better than remaining all the time in their offices. If attentive, they will learn as much in court as they can in their offices during the same hours, and it will be of more use to them as regards the art of managing causes. There are many matters in the law, moreover, that cannot be learned anywhere else."

It was when he was attending court, in accordance with this practice, in April, 1800, that Mr. Binney witnessed William Lewis's dramatic protest against Judge Chase's course in announcing his opinion of the law in the case of John Fries, the Northampton insurgent, before the jury was impanelled. One can well imagine the thrill of excitement with which the young lawyer heard Lewis's solemn declaration of his intention to withdraw from a case in which the law had been prejudged, and the rejoinder that then, with God's help, the court would be the prisoner's counsel, and would see that he had a fair trial.<sup>1</sup>

This same habit of attending court led to the acquaintance with Gilbert Stuart, who in 1800 was prosecuting an injunction against the sale of Chinese copies of Stuart's Washington, which some one had brought from Canton.

"I was sedulous in my attendance on the courts, and here I became acquainted with Stuart. He came frequently to my office, which was in Front Street. I was always entertained by his conversation. I endeavoured to enter into his peculiar vein, and show him that I relished his wit and character. So he took snuff, jested, punned, and satirized to the full freedom of his bent. 'Binney,' he said to one of my

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<sup>1</sup> Leaders of the Old Bar, p. 34.







friends, 'has the length of my foot better than any one I know of.'

"When [my sister] requested me to give her [a portrait], I made an appointment with Stuart, and called to give my first sitting. He had his panel ready (for the picture is painted on a board), and I said, 'Now, how do you wish me to sit? Must I be grave? Must I look at you?' 'No,' said Stuart, 'sit just as you like; look whichever way you choose; talk, laugh, move about, walk around the room, if you please.' So, without more thought of the picture on my part, Stuart led off in one of his merriest veins, and the time passed pleasantly in jocose and amusing talk. At the end of an hour I rose to go, and, looking at the portrait, I saw that the head was as perfectly done as it is at this moment, with the exception of the eyes, which were blank. I gave one more sitting of an hour, and in the course of it Stuart said, 'Now, look at me one moment.' I did so. Stuart put in the eyes by a couple of touches of the pencil, and the head was perfect. I gave no more sittings.

"When the picture was sent home it was much admired; but Mr. T—— M—— observed that the painter had put the buttons of the coat on the wrong side. Some time after this Stuart sent for the picture, to do some little matter of finish which had been left, and, to put an end to foolish cavil, I determined to tell him of M.'s criticism, but how to do it without offending him was the question. The conversation took a turn upon the excessive attention which some minds pay to the minutiae of costume, etc. This gave the opportunity desired. 'By the way,' said I, 'do you know that somebody has remarked that you have put the buttons on the wrong side of that coat?' 'Have I?' said Stuart. 'Well, thank God! I am no tailor.' He immediately took his pencil and with a stroke drew the lapel to the collar of the coat which is seen

there at present. 'Now,' said Stuart, 'it is a double-breasted coat and is all right, only the buttons on the other side not being seen.' 'Ha!' said I, 'you are the prince of tailors, worthy to be master of the merchant tailors' guild.'

"Stuart had all forms in his mind, and he painted hands and other details from an image in his thoughts, not requiring an original model before him. There was no sitting for that big law book that, in the picture, I am holding. The coat was entirely Stuart's device. I never wore one of that colour (a near approach to a claret colour). He thought it would suit the complexion.

"On the day that I was sitting to him the second time I said to Stuart, 'What do you consider the most characteristic feature of the face? You have already shown me that the eyes are not; and we know from sculpture, in which the eyes are wanting, the same thing.' Stuart just pressed the end of his pencil against the tip of his nose, distorting it oddly. 'Ah, I see, I see,' said I."<sup>2</sup>

At that time Mr. Binney and several of his friends lived at Mrs. Smith's boarding-house, a wedge-shaped house (an unusual structure in rectangular Philadelphia) at the corner of Walnut and Dock Streets. Professor Silliman, the celebrated chemist, has left a record of their life there as he saw it in 1802 and 1803.

"This house attracted a select class of gentlemen. The Connecticut members of Congress resorted to it, I believe, while the government was in Philadelphia; and after its removal, as they were passing to and from Washington, it was a temporary resting-place. Other gentlemen of intelligence were among its inmates, and several of them, being men of great promise, were then rising into the early stages

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<sup>2</sup> Life and Works of Gilbert Stuart, p. 139.

## 1800-03] FIRST YEARS AT THE BAR

of that eminence which they attained in subsequent years. Among them were Horace Binney, Charles Chauncey, Elihu Chauncey, Robert Hare, John Wallace and his brother, and as frequent visitors John Sergeant and George Vaux. There were occasionally other gentlemen, but those I have mentioned were our stars. . . . Enos Bronson, of Connecticut, and Yale College, was also of our number. He edited the *United States Gazette* with much talent.

“The gentlemen whom I have mentioned, with their friends and visitors that were attracted by them to the house, formed a brilliant circle of high conversational powers. They were educated men, of elevated position in society, and their manners were in harmony with their training. Rarely in my progress in life have I met with a circle of gentlemen who surpassed them in courteous manners, in brilliant intelligence, sparkling sallies of wit and pleasantries, and cordial greeting both among themselves and with friends and strangers who were occasionally introduced.”

The style of living differed somewhat from what Silliman was used to in Connecticut, for he went on to say, “Mrs. Smith, a high-spirited and efficient woman, was liberal almost to a fault, and furnished her table even luxuriously. Our habits were, indeed, in other respects far from those of teetotalers. No person of that description was in our circle. On the contrary, agreeably to the custom which prevailed in the boarding-houses of our cities half a century ago, every gentleman furnished himself with a decanter of wine, usually a metallic or other label being attached to the neck, and bearing the name of the owner. Healths were drunk, especially if stranger guests were present, and a glass or two was not considered excessive,—sometimes two or three, according to circumstances. Porter or other strong beer was used at table as a beverage. As Robert Hare was a brewer of porter and

was one of our number, his porter was in high request; and, indeed, it was of an excellent quality. I do not remember any water-drinker at our table or in our house, for total abstinence was not thought of, except, perhaps, by some wise and far-seeing Franklin.”<sup>3</sup>

An incident of Mr. Binney’s life about this period, recalled in his letters, was his meeting Humboldt when the latter visited Philadelphia in 1804.

“I cannot forget an evening when the late Dr. Benjamin Rush, then my neighbour, asked me, then quite a young man, to join two or three of his friends, to meet Von Humboldt and General Miranda at his temperate supper-table. I can never forget the occasion, and I still retain parts of the interesting remarks of Von Humboldt, in his replies to Dr. Rush’s queries. The conversation was principally between the two. I was altogether a listener. Dr. Rush’s queries generally were directed to points connected with his own profession, the character and cure of diseases among the natives (aboriginals) of certain parts of South America which Humboldt had explored, the differences between the level and mountain ranges, the phenomena of parturition (accouchement), gestation, etc., the general treatment of fevers, wounds, etc., and the peculiarities in physiology and pathology in certain particulars. I recollect also some interesting inquiries into the sources from which Von Humboldt had obtained the best instruments for philosophical experiment or observation on his travels,—thermometers, barometers, meters of every kind, magnifiers, telescopic and microscopic, quadrants, sextants, etc. I should say Dr. Rush pumped him thoroughly; but in truth there was no pumping about it. Von Humboldt seemed to be a great reservoir, high up above

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<sup>3</sup> Life of Benjamin Silliman, M.D., LL.D., by George P. Fisher, vol. i. p. 98.

## 1800-04] FIRST YEARS AT THE BAR

all, and the head so strong that as soon as the cock was turned, out came the answers in a full, gushing stream, as if it was so full of that matter that there could be room for nothing else. Yet it was the same on every question or remark that was put or made to him. His accent was very decided, but his utterances voluble and full. He charmed us immensely. I have often thought of it, since, as the first page of his *Kosmos*. Never at a loss. No question new to him. No remark that was not enlarged or improved by him. I carried home a much larger store from him than from any one I have listened to for three hours. I never saw him afterwards, but this *soirée* has given zest to all that I have heard of him or read in his works since.”<sup>4</sup>

On March 13, 1802, the Law Library Association of Philadelphia was founded, which twenty-five years later became the present Law Association. Mr. Binney was one of the seventy-two signers of the original articles of association, and bore his share of the practical work of the society. In the same year, in right of descent, he qualified as a member of the Society of the Cincinnati.

Shortly before the Harvard Commencement of 1800, when, according to the custom of the day (and which prevailed for about seventy years longer) all the graduates of three years standing received the degree of M.A. without further examination. President Kirkland offered Mr. Binney the Master's Oration, in recognition of his having attained at graduation a rank which would under ordinary circumstances have entitled him to the Valedictory; but he declined the honour, finding it impracticable to leave Philadelphia just then. His decision was probably due to the feeling that having undertaken to seek an opening at the bar in Philadelphia, he could not afford to be absent at all,

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<sup>4</sup> Letter to Dr. F. Lieber, January 26, 1860.

even for a short time. This certainly was his view a year later, when he wrote: "Absolute business does not chain me to Philadelphia, 'tis true, and I might leave without material detriment at the moment, but a young man's passage here is uphill. I have very many before, and some few behind me, but this latter number must not be diminished. They will take my place if I run to gather flowers on the mountain's side, or rest one moment from my upward path."

Again, in the summer of 1803, he wrote: "My little business is not to be seriously deranged by a short absence, it is true; but in September we have a term of three weeks during which I am chained to the desk as reporter, and in October for the Circuit Court I am engaged in two causes, one of vast importance, which in all probability will be tried."

This extract shows that Mr. Binney had some experience in reporting before he became reporter to the Supreme Court of the State in 1807. The cause which was "of vast importance" in the eyes of the enthusiastic young lawyer was apparently postponed, and he eventually even found some good reason for a visit to New England in October, 1803. The reluctance to leave Philadelphia may have been partly due to the presence of Miss Elizabeth Cox (the youngest daughter of Colonel John Cox, of Bloomsbury Court, near Trenton, New Jersey, an officer of distinction, who had died in 1793), whose name is mentioned in the same letter, and to whom he must, about that time, have become engaged. They were married on April 3, 1804, and their devoted attachment to each other remained unclouded throughout a married life of more than sixty years.

Very shortly after his marriage the case of *Perry vs. Crammond*,<sup>5</sup> apparently the case "of vast importance," was

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<sup>5</sup> 1 Wash. C. C., 100.



tried before Judge Washington. Mr. Binney was associated with Messrs. Ingersoll and Lewis for the plaintiff, Messrs. Rawle and Edward Tilghman being against them. As might be judged from this array of counsel, the suit involved some knotty questions of commercial law, but the verdict was for the defendant, a result which must have made the young lawyer's future look no less doubtful than before. Even about two years later the prospect was still so poor for the junior bar that some of them held a meeting at Mr. Binney's office, when it was proposed to abandon the law altogether, and form a settlement in the woods of Luzerne County. The intention may not have been very seriously entertained, but it showed that the young men of that day were heartily desirous of a strenuous life, as well as in friendly sympathy with each other.

In spite of his lack of opportunity, for several years, to distinguish himself at the bar, he had undoubtedly won a reputation for ability and high character, for in 1806, when only twenty-six years old, he was chosen a trustee of the University of Pennsylvania, and secretary of the Pennsylvania Society of the Cincinnati. He held the latter office until 1820, and the former until a later date.

By the time Horace Binney attained his majority, on the fourth day of the nineteenth century, his political views were fully formed, and while they may have become tempered by the riper judgment of increasing years, deepened, intensified perhaps at times, they never substantially changed. He was from the first a Federalist, and he never pretended to belong to any other party.<sup>6</sup> A strong, stable, and orderly government he thought absolutely essential to the preservation of

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<sup>6</sup> In his third pamphlet on the Habeas Corpus, written early in 1865, he said, "I do not assume the name of any living party, but that of the country."

liberty, whose worst enemy was unreasoning popular prejudice, especially when manifested as party spirit. He held that the Constitution was a surrender by the people of a definite portion of their power, the extent of the grant being gathered from a fair interpretation of the language employed, and from the objects for which the Union existed, and the grant itself one which should be maintained even against all illegal attempts of the people to resume the power thus granted. Under the Constitution, moreover, the United States constituted a nation, *one* as to its own people, and *separate* as to all other nations. Fidelity, obedience, and submission to the constitution and laws of a State were required of its citizens; but allegiance, in the proper sense of the term, was due to the nation alone.

The Federal party was, in his judgment, the one party which was thoroughly faithful to, and conservative of, the Constitution, upholding it in the spirit in which it had been framed and adopted, preventing any one of the departments of the government from usurping the functions of the others, and maintaining the supremacy of the national government, within its constitutional sphere, over those of the several States. Great, therefore, was his regret, and serious his forebodings for the future, when the returns of the election of 1800, at first favourable to the Federalists, finally showed a majority against them. It was small consolation that the equality of Jefferson and Burr made them competitors for the support of the Federalist electors, and while Mr. Binney must have approved Hamilton's course in securing that support for Jefferson, as the less dangerous of the two, his own feeling towards Jefferson, and all distinctly Jeffersonian views or doctrines, was never anything but abhorrence.

The fact that Mr. Binney became a voter just after the Federal party began to lose its hold on the people, so that

during the first years of his manhood his vote was always cast in an attempt to stem the ever-increasing and finally overwhelming Democratic tide, never for a moment weakened his own federalism. Very possibly it may have served to intensify it. No man was less of a trimmer or more thoroughly sincere in his political views, which he had not taken up lightly or in haste, but seriously, upon reflection, giving to political doctrines and principles the same careful study which he gave to those of the law. The adverse decision of a court, if he believed it really unsound, never controlled his judgment, and for the adverse decision of a popular majority he had still less regard. To him, as a young man, a majority, except in some local contests, always meant a majority on the wrong side, and "the worship of the god majority," as he expressed it, was at all times peculiarly distasteful to him.

His admiration for Hamilton dated, as already noticed, from boyhood; by the time he reached manhood it had only strengthened; and it never, throughout his long life, suffered the slightest diminution. Washington he held to be "above exception or comparison, as the *man* for the day and the country; but as a *statesman* no one equalled [Hamilton] in his work for the Constitution and the rising government."<sup>7</sup> Adams, on the other hand, he held to be mainly responsible

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<sup>7</sup> Letter to J. C. Hamilton, December 29, 1859.

"I think, and have for many years thought, that Hamilton was and remains the first statesman in our country, perhaps not surpassed anywhere; of extraordinary maturity in very early life, of singular finish in his accomplishments for such a post either in war or peace, and as honest as Pericles; having some, though not all, his many sides. What would I not have given to have had him among us before and during our great troubles, and most particularly for the regulation of our finances, in which department he was *facile princeps*? I ought to say that with as many opportunities as Pericles had to enrich himself, he died as poor." (Letter to Sir J. T. Coleridge, August 25, 1864.)

for the downfall of the Federal party. He conceded the latter's perfect integrity, and his immense services during the Revolution, but condemned that vanity and jealousy which made him, as President, both weak and dangerous, and finally precipitated his fall. This opinion Mr. Binney formed at the time, "as early as the first year of this century."<sup>8</sup>

It is difficult for the men of the twentieth century to understand the intensity of the distrust and dislike, even hatred, with which perfectly disinterested men viewed the doctrines of their political opponents a hundred years ago. In 1800 the government under the Constitution was still an experiment, the future of which was far from certain. The Democrats sincerely believed that the Constitution was intended by the Federalists to pave the way for the establishment of an aristocracy, if not a monarchy, and Hamilton, who had striven and fought for popular liberty with all the energy of his strong character, was, ridiculous as it may seem, execrated as a monarchist. To the mind of the Federalists, on the other hand, Jefferson's State rights doctrines directly attacked the bond of federal union, and tended to a reversion to the deplorably weak government of the confederation, if not to utter disintegration, while his excessive laudation of the people appeared to make all public officers the mere puppets of an unreasoning mob.

Federalist dislike of Jefferson and his followers was intensified by his sympathy with the French Revolution, even at the time of its excesses, and by his apparent wish to disseminate in the United States the same doctrines which had inflamed the mind of France. The conditions of the two countries were, it is true, utterly different, but the guillotine had not been employed only against oppressors; many of

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<sup>8</sup> Letter to J. W. Wallace, September 25, 1871.

the truest, most liberal-minded patriots in France had been dragged to the scaffold; and the Federalists felt that the doctrines which masqueraded under the false title of "Liberty, Equality, and Fraternity" were essentially pernicious and were not to be endured in any country.

Another factor was Jefferson's disloyalty to Washington, a course all the more condemned by the Federalists because of its having been to some extent concealed. The man who, as a Cabinet officer, covertly fomented attacks upon his own chief was in their eyes little better than a traitor. His course in this respect, and his French leanings also, may have been exaggerated by his political opponents, but whether wholly justifiable or not, the hostility to him seems to have been something without a parallel at the present day.

While Mr. Binney's mind was essentially non-partisan, it could not help being affected by the spirit of the day, and to that spirit may fairly be traced a part, at least, of his abhorrence of everything Jeffersonian. Jefferson, he once wrote, "was the devil in our Paradise; with his nature and French revolutionary training, he could not help being so." After the Federalist downfall no administration commanded Mr. Binney's thorough confidence, and the more any party or any administration was infected with the Jeffersonian heresy, the more he distrusted it. Though ready to concede that "God fulfils himself in many ways," he believed thoroughly in "the old order" of Federalism, and would scarcely have admitted that that particular "good custom" could under any conceivable circumstances "corrupt the world." Had he lived until the elections of 1884-1892, he would unquestionably have supported Mr. Cleveland, simply because his own views were much more nearly represented by Cleveland than by either Blaine or Harrison; but he would have held that Cleveland's ideal of a democracy "untempted by clamour,

unmoved by the gusts of popular passion," involved a contradiction in terms, democracy being to him the very exponent of clamour and popular passion.

Like his legal preceptor, Jared Ingersoll, Mr. Binney "had, at no time of his life, a warm predilection for politics." Mr. Ingersoll's influence and example may possibly have had something to do with this, and "the great subversion of 1801" was naturally disheartening to a convinced Federalist. Still, he had no wish to evade any of the duties of a citizen, and in 1806 he became a candidate for the Legislature on what would now be called a "fusion ticket" of Federalists and Independent Democrats, or, as their opponents called them, Quids.<sup>9</sup> His friends Wallace and Chauncey seem to have been active in bringing about the nomination, and a letter of the latter states clearly the conditions upon which Mr. Binney would consent to serve. "Your advice to Binney as to duty, and his own judgment, are perfectly right. He must go like a gentleman, and with true men, or you and I know perfectly well that he will not go at all."

With the reckless disregard of truth shown by the "yellow journals" of every age, Duane's *Aurora* charged Mr. Binney with being "an apostate Democrat of 1797."<sup>10</sup> In 1797 he was but seventeen years old, and in point of fact did not return to Philadelphia until after the election. Moreover, he had apparently, even at that early age, adopted the Federalist principles, from which he never swerved. The utter falsity of Duane's slur was probably well understood,

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<sup>9</sup> Under John Randolph's leadership these Independents were recognized as an element distinct from the regular Jeffersonian organization, a sort of third party, a *tertium quid*. Hence the name.

The full title of the then Democratic party was Democratic Republican, and the members were called Republicans and Democrats indifferently.

<sup>10</sup> *Aurora*, September 10, 1806.

for among the five successful candidates Mr. Binney stood at the head of the poll, receiving 2056 votes.<sup>11</sup>

“Some of the occurrences in the Legislature while I was there,” wrote Mr. Binney, “were of considerable interest. Chief Justice McKean, who had been carried into the office of governor in 1799 upon the shoulders of Jeffersonian Democracy, and had slashed away famously in his first days against Federalists and apostate Whigs, was fain, at the end of his second term, to rely upon them for his re-election; and, with their since proverbial ductility, they united with a remnant of his former friends and did re-elect him. The Legislature, however, contained a majority of his alienated friends, who, having once been sweet, had become by fermentation the sourest of enemies, and they resorted to the customary methods of annoyance. His defence and the defence of his recent measures, against the opposition of Findlay, afterwards governor, and Dr. Leib, fell in the House of Representatives to Charles Smith (afterwards, but not till some years afterwards, Judge Smith, of Lancaster, a son-in-law of Judge Yeates) and myself. It was amusing enough—for both Smith and myself were then and ever afterwards Federalists—not to be mistaken. We did our duty, however, not from love of McKean, but from scorn of his former politics; and both of us were asked in debate by Dr. Leib whether the vacant slippers of a deceased judge were not in our view. I could say for myself, and can still say, that I never desired to walk in any other man’s shoes than my own.”

One of the measures passed at this session was the arbitration law, which Mr. Binney opposed, having no confidence in schemes for making every man his own lawyer. This was probably the bill in regard to which the governor sent the

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<sup>11</sup> True American, October 16, 1806.

Secretary of the Commonwealth, Mr. Thompson, to confer with Mr. Binney and to say that he (the governor) thought it a foolish bill, but did not see any great objection to it. Mr. Binney replied that such a reason for signing the bill might satisfy some governors, but that he thought it would be too bad for one who would be recollected as a judge long after he was forgotten as a governor to countenance such a measure.

A letter of March 13, 1807, to Mr. Wallace shows the keen interest which Mr. Binney took in the active work of the Legislature, in spite of his distaste for public life.

I dreamt you were dead of a dysentery, and your letter joined issue with the dream, and non-suited it. . . . Although I am still raggy about the muscles and my throat as tender as my eye, I am so much my own man that I have had great satisfaction in speaking against the Address to the President, and upon principle, as all our side of the House say, getting the better of the addressers. I yesterday took some pains to teach the President better manners than to lay out a road through Pennsylvania to the exclusive benefit of Chillicothe in Ohio and the State of Maryland, and we triumphed by 60 over 21; we fixed the points thro' which it shall pass. Third reading of the bill this morning. [(In the margin.) This bill has just passed. Yeas, 80; nays, 1. Io Tri.] . . .

What the fate of turnpikes will be I cannot tell; the resolution was adopted and a committee appointed to bring in a bill, of which committee I am chairman, and shall draw the bill to-day. The bank I think will not go this session; and I have not the least right to be sanguine with respect to the success of the insurance companies. If they do not pass in ten days, then they are gone for the present session.



## IV

## ACTIVE PROFESSIONAL LIFE

1807-1815

THE close of the legislative session of 1806-07 marked the beginning of Mr. Binney's active practice at the bar. Up to that time, he once wrote, "I continued an unrewarded drudge," but after that "the door was opened wide to me at once, and I entered." Aside from what general reputation he had acquired as a member of the Legislature, his charge of certain memorials from the Chamber of Commerce, and one for the incorporation of the United States Insurance Company, had made his abilities known to merchants and underwriters. Perhaps also, to quote his own words, "the time had come when an industrious young man of fair character and capacity might generally expect to come in as a reaper, after having been a patient gleaner only for six or seven years." He was further aided by his Reports, begun in 1807 at the invitation<sup>1</sup> of Chief Justice Tilghman, who, when for a short time president of the Common Pleas of Philadelphia, had suggested his reporting the decisions of that tribunal. Tilghman's translation to the Supreme Court gave wider scope for carrying out the plan, which, in its fulfilment, not only increased the reporter's reputation at the bar, but has given to the profession a series

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<sup>1</sup> At that time, and until 1845, the work of the gentlemen who successively reported the decisions of the Supreme Court of Pennsylvania was an independent undertaking, like any other literary work. In 1845 the office of State Reporter was established, to be held for five years, and in 1878 a salary was attached to the office and the Reporter deprived of all interest in the sale of the books.

of volumes generally conceded to be unsurpassed of their kind.<sup>2</sup> The statements of the facts involved and the arguments presented, clear and concise, yet complete and eminently fair, form a proper introduction to the opinions without trenching on their province, while the faithful analyses show at a glance the reporter's thorough grasp of each case. To make the cases of value as precedents required, in his opinion, great care and accuracy in reporting the arguments of counsel, and he was wholly opposed to that school of reporting which either reduces them to a confused list of citations or omits them altogether. Careful, even elaborate, reporting was peculiarly desirable at that time, as even the English reports were comparatively few, and American authorities still more rare, so that every new decision was far more of an addition to the stock of precedents than is ordinarily now the case. Tilghman's carefully reasoned opinions, moreover (and for the first ten years or more of his chief-justiceship he delivered an opinion in every case but five), were well worth all the labour which the reporter expended upon the setting in which he offered them to the profession; and fortunately the condition of the law-book market assured a fairly remunerative compensation<sup>3</sup> for such work. The six volumes contain some cases decided before

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<sup>2</sup> In *McLaughlin vs. Scot* (1 Binn., 61) it was held that arbitrators could allow costs, although the statute appeared to forbid such allowance where the judgment was for less than fifty pounds. This rather anomalous decision was referred to in *Stuart vs. Harkins* (3 Binn., 321), and Mr. Binney inserted two foot-notes in regard to what had taken place when the former decision was rendered. In *Lewis vs. England* (4 Binn., 5) the point came directly before the court, and *McLaughlin vs. Scot* was overruled; but Tilghman, C. J., said, "From the known accuracy of the reporter, I make no doubt but that what fell from the court is faithfully set down." This is believed to be the only instance in which the accuracy of Mr. Binney's report of any case was questioned for a moment, if it was really questioned at all. Certainly the chief justice did not question it.

<sup>3</sup> About two thousand dollars a volume.

## 1807-08] ACTIVE PROFESSIONAL LIFE

1807, and all the important decisions of the court down to September, 1814, when Mr. Binney's full employment at the bar left him no time for reporting according to the standard he approved. In 1808 he wrote, anonymously, the American notes to Kyd's treatise on Awards.

Though the start had been fairly made, the race was still to be won. "For some years," he wrote, "my contemporaries and I had to work for our seniors, who were retained in all cases of importance. It was our duty to prepare the pleadings and evidence, to put all in order for trial, in fine, to be fag, as the Eton boys term it, to the older classes. This did us no harm."

Mr. Binney's first argument in the Supreme Court of Pennsylvania was in the spring of 1808, in an unimportant suit for damages for the removal of a fence, turning on the question of the conclusiveness of the regulator's lines.<sup>4</sup> He had won a verdict for the plaintiff at nisi prius against a rather adverse charge, but was unsuccessful on the motion for a new trial. His first important case was *Gibson vs. Philadelphia Insurance Company*,<sup>5</sup> decided on December 24, 1808, though argued several months before. His connection with the cause is best stated in his own words.

"More than fifty years ago Samuel W. Fisher, the president of the Philadelphia Insurance Company, came one morning into my small office, then having abundant room for all my visitors, and gave me a retainer to argue the case of *Gibson* against that company. Mr. Gibson, the plaintiff, who was a member of the bar, and my master in the law, Mr. Ingersoll, were to argue it against me. The question regarded the proper mode of adjusting a particular average

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<sup>4</sup> *Godshall vs. Marian*, 1 Binn., 352.

<sup>5</sup> 1 Binn., 405.

under a clause in a respondentia bond; and it was new and not without difficulty. It came before the court upon exceptions to a report of award under the Act of 1803, made by Edward Tilghman, with the concurrence of another member of the bar, against the opinion of the third referee, who was also a member of the bar; and it turned altogether upon principles of commercial law. I examined the papers, and then said to Mr. Fisher, 'You are not going to leave me alone in this cause. You know who is against me.' 'I know all that,' he said, 'but I will not retain anybody else. Go on and make the best of it.' After the award was confirmed, I asked Mr. Fisher why he had been so short in refusing me a colleague. He replied that he had done as he had been told to do. Mr. Tilghman had told him to retain me, and had said, 'Put it on his own shoulders and make him carry it. It will do him good.' The lesson may be good for others. The most cheering effect of it to myself was its giving me the assurance of the good will of such a man as Edward Tilghman."<sup>6</sup>

The sketch of Mr. Tilghman from which the above is taken breathes a spirit of lasting gratitude to him who thus launched the young lawyer into the current of professional activity. *Gibson vs. Philadelphia Insurance Company* was a most fortunate case to win a reputation on at that time, for insurance cases were probably never so numerous or important as in Philadelphia from 1807 to 1817. That city was the first commercial port in the United States, and her insurers were as active as her merchants. At the time of the Berlin decrees and the British orders in council, Philadelphia policies covered innumerable adventures at sea, leading to consequences which Mr. Binney thus described: "The stoppings, seizures, takings, sequestrations, condemnations, all of

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<sup>6</sup> Leaders of the Old Bar, p. 70.

a novel kind, unlike anything that had previously occurred in the history of maritime commerce,—the consequence of new principles of national law, introduced offensively or defensively by the belligerent powers,—gave an unparalleled harvest to the bar of Philadelphia. No persons are bound to speak better of Bonaparte than the bar of this city. He was, it is true, a great buccaneer, and the British followed his example with great spirit and fidelity, but what distinguished him and his imitators from the pirates of former days was the felicitous manner in which he first, and they afterwards, resolved every piracy into some principle of the law of the nations, newly discovered or made necessary by new events; thus covering or attempting to cover the stolen property by the veil of the law. Had he stolen it and called it a theft, not a single lawsuit could have grown out of it. The underwriters must have paid, and have been ruined at once and outright. But he stole from neutrals and called it lawful prize; and this led to such a crop of questions as nobody but Bonaparte was capable of sowing the seeds of. For while he did everything that was abominable, he always gave a reason, and sometimes a specious reason, for it, and kept the world of the law inquiring how one of his acts and his reasons for it bore upon the policy of insurance, until some new event occurred to make all that they had previously settled of little or no application. In many instances the insurance companies got off; in others, though they failed, it was after a protracted campaign, in which, contrary to campaigns in general, they acquired strength to bear their defeat. In the mean time, both in victory and defeat, and very much the same in both events, the lawyers had their reward."

Mr. Binney had been chosen a director of the first United States Bank in January, 1808, an important trust for so young a man, and the next year he argued United States

*Bank vs. De Veaux*,<sup>7</sup> his first case in the Supreme Court of the United States. From it he won "as much credit as a young man could gain in association with elder men," the point on which the case was gained (the right of a corporation, composed of citizens of one State, to sue a citizen of another State in the Federal courts) being suggested and elaborated by him alone, before his senior, Mr. Ingersoll, was taken into the case.

On the journey, by coach, to argue this case, the first night was spent at the Head of Elk, where, as often happened at that day, several guests had beds in the same large room. Mr. William Lewis, who was an incessant smoker, was one of the room-mates, and after the last candle had been extinguished the cigar was seen alternately firing up from his pillow, "and disappearing in the darkness, like a revolving light on the coast."<sup>8</sup>

"It was upon this visit to Washington," wrote Mr. Binney, "that I saw Mount Vernon, the former residence of General Washington. Judge Washington, his nephew and then proprietor of the estate, invited six or eight of the bench and bar to pass Sunday with him, and we went on the way to Alexandria on Saturday afternoon to pass the night. On Sunday the Judge's coach and four came for us, and, with great misgivings, six of us, and none of them very light, embarked in it. The coach looked as if it might have been an heir-loom of the estate, antique, capacious, and shewy. A black coachman, with rather incomplete garments, a shabby

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<sup>7</sup> 5 Cranch, 6. Oddly enough, as Mr. Binney himself noticed, this case is referred to in *Louisville R. R. Co. vs. Letson*, 2 How. (U. S.), 497, as if overruled by that decision, which gave to a corporation, for the purpose of suit in the Federal courts, the rights of a citizen of the State of its incorporation, irrespective of the actual citizenship of its members, an extension of the doctrine of the earlier case, but entirely consistent with it.

<sup>8</sup> *Leaders of the Old Bar*, p. 42.

hat, and his feet wrapped up in a piece of old green baize, held the reins of four of the most raw-boned and ill-groomed horses I ever sat behind; and the harness was unlike anything I had ever seen before, or have seen since, except perhaps in France, being part leather and part rope, the harness of the leaders and that of the wheel horses having less consanguinity than the horses themselves, looking as if it had been collected from different parts of Old Virginia. The morning was cold and the roads deep. We had not gone a mile of the way before it became obvious that the load was too much for the horses, and if they had been good, it would have been too much for the harness. Some of our company got out, and footed it to Alexandria for another outfit. Considering that the judge was responsible for me where I was, I stuck to the coach, and the coach stuck to the mud; and had it not been that the horses got very hungry and pulled desperately for the corn-crib at Mount Vernon, I might have stuck there much longer. By dint, however, of whipping, and above all a desperate appetite in our cavalry, we made out to arrive, after being passed on the road by our fellow-travellers, who had been refitted at Alexandria, and who greeted us *en passant* with a shout of laughter. The *carcajada* came from David H—— and David B. Ogden. But a warmer welcome and a higher degree of comfort than were prepared for us at Mount Vernon it was impossible to have anywhere. I never passed a more delightful day and night than under the roof of General Washington and his nephew, the judge, who resembled his uncle in many things more than in his equipage. Judge Brockholst Livingston was of our party, a most pleasant and gentlemanly companion, particularly free and gay during our Saturday night at Alexandria, which that rogue David H—— said was accounted for by an enormous charge for gin, which I believe he prevailed

upon the landlord to put in the bill, and after it had served its purpose of a laugh, was rectified as a mistake."

In each of the next two winters Mr. Binney again visited Washington, in the attempt to secure a renewal of the charter of the United States Bank, and became acquainted with many of the men who then figured in public life. "Such was the entire recklessness," he wrote, "of some of the leading party men to the consequences of overthrowing the bank, that although the corporation was to die on the 4th of March, 1811, and it was not known to them how the bank would hold to the property of the stockholders after that day, the committee of the Senate, before which I appeared, would not recommend a day to be given to the bank to wind up its concerns or to collect its dues. Mr. Clay, who was one of the committee, told me that he was afraid of us—he would not give us an hour. He said it, it is true, with a smile; but between the smile of Mr. Clay<sup>9</sup> over the death-bed of the first bank and the frown of General Jackson over the death-bed of the second, the difference was a shadow only.

"I have more than doubted whether Mr. Gallatin, to whom I had made known the intention of the directors to assign to trustees, notwithstanding he was an apparent friend to renewal, did not let the cat out of the bag, to increase the responsibility of Clinton, the Vice-President, by leaving the bank to its own measures.

"I learned at Washington, in the winter of 1811, that the policy of the administration was to get a renewal, if they could do it without too much responsibility, and if they could not, to throw the responsibility of refusing it on George Clinton, who was Vice-President, and was feared as a future

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<sup>9</sup> Some years later Mr. Clay changed his mind as to the usefulness of such an institution, and was for a time one of the counsel for the second United States Bank.



opponent of Mr. Madison. Worthington, of the Senate, was an intimate friend of Gallatin, and would be the last to vote upon the question. If the bill would be carried without his vote, he, it was said, was to vote for it; but if a chance should occur to make a tie, it was the design that he should make it. So it occurred, and so he voted. Clinton gave the casting vote against the renewal. The coincidence may have given rise to the story. The bank wound up its concerns so judiciously that the mischiefs of non-renewal were not felt till the litter of State banks that came in its place spread their paper over the country, and in three years after the whole broke. The same thing happened, and after less than the same interval, with the second bank."

In July, 1808, Mr. Binney became a member of the the American Philosophical Society, as his father had been before him. In the autumn of 1810, and again a year later, he was elected to the Common Council of the city of Philadelphia, where his associates chose him their president each term. His court practice continued to increase, and in 1811 he won his second victory in the Supreme Court of the United States in *King vs. Delaware Insurance Company*,<sup>10</sup> in which it was held that where an officer of a British man-of-war, being misinformed as to the effect of the Orders in Council, warned a ship's captain not to proceed to his destination, and the captain abandoned the voyage without attempting to verify the information, the underwriters were not liable for the consequent loss.

In the same year he won the case of *Munns vs. Dupont*,<sup>11</sup> in the Circuit Court, a leading authority on probable cause in an action for malicious prosecution.

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<sup>10</sup> 6 Cranch, 71.

<sup>11</sup> 3 Wash. C. C., 31; 1 Am. Lead. Cas., 200.

In 1812 Mr. Binney's increasing income enabled him to build the house on the east side of Fourth Street, south of Walnut Street, which, with the one-story office adjoining, built soon after (and paid for out of the proceeds of the fifth volume of his reports), he occupied until his death. He had already two children,—Mary, born February 27, 1805, and Horace, born January 21, 1809. By the time that his son was a year or two old, Mr. Binney had overcome whatever feeling against infant baptism he may have had, and was ready, moreover, to receive the same sacrament himself. He and his children were baptized together by Dr. Abercrombie, rector of the United Churches of Christ Church, St. Peter's, and St. James's, and he doubtless became a communicant very soon afterwards.

Mr. Binney has left no record of his precise views in regard to the war with England, which broke out in 1812. He probably thought it a mistake in its inception, an error of judgment on the part of the administration, which could have been honourably avoided but for Madison's blind confidence in the supposed good will of Napoleon, and finally his yielding to the excited clamour of a certain element in Congress; but this view did not involve approval of the course of the New England Federalists in persistent opposition to the war after it had once begun. In a letter written in 1863, in regard to the draft, he referred to the debates on the same point in 1814, as follows:

New England got, as you have heard, exceedingly crusty, and was not unwilling, after Madison's second election, to put an end to the war, or the government, or to anything that first presented. The Monroe argument [on the draft] proceeded upon the Federal rule of construction, that the power to raise and support armies being given to Congress, all the ways of doing this that were reasonably necessary and proper were also given. The argument of the opposi-

tion was weak, and I think savoured of hatred to the war more than of the old Federal spirit. After Hamilton's death, indeed, the Federal party had not a name to live.<sup>12</sup>

Madison's renomination in 1812 was a defeat for the followers of Clinton, who thereupon sought the aid of the Federal party, which, although by itself a hopeless minority, was still strong enough to prove a valuable ally. In June, 1812, an informal convention of Federalists met in New York to consider the proposition of the Clinton Democrats, and Mr. Binney attended as a delegate from Pennsylvania. Otis and others favoured coalition, urging the futility of a contest by the Federalists alone, and the advantage of a campaign which had some promise of success. Rufus King, on the other hand, argued that the Federal party could be held together only in support of its distinctive principles, which differed so radically from those of the Democratic that they would be compromised by an alliance with any faction of the latter, even one whose candidate claimed to be fairly conservative, and that the party would disintegrate in consequence. He held that the possession of office was not essential to the usefulness of the Federal party, which, even when out of office, could do good work in checking the excesses of extreme democracy, so that the only wise course was to stand for Federal principles exclusively, by which means alone could the party be maintained and its principles kept alive. King's advice was not followed, and his prophecy of the extinction of the Federal party was fulfilled, but his words sank deeply into Mr. Binney's mind and memory, for the view was one in

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<sup>12</sup> Letter to Dr. Lieber, August 6, 1863. A letter to Mr. J. C. Hamilton in regard to the same affair says, "Any one who recollects this must say certainly General Hamilton must have been both dead and forgotten, or the debate would never have taken such ground in the hands of his friends of old."

which he thoroughly coincided, both at the time and ever afterwards. He himself refused to follow the leaders of the party, maintaining that they had, "after the manner of a Dutch auction, sold themselves to the lowest bidder."

Whatever may have been Mr. Binney's general opinion in regard to the war, he certainly disapproved one act of the administration in connection with it,—viz., the harsh treatment of General Hull after his surrender of Detroit. The first court-martial was dissolved by the President, without assigning any cause. A year later a second court-martial was ordered, and Mr. Binney volunteered to defend the general, but the aid of counsel was refused him.<sup>13</sup> One can well imagine what Mr. Binney must have thought of such a piece of tyranny.

Another matter growing out of the war terminated more satisfactorily. The skipper of a small New England coaster, a thoroughly loyal man, having been captured, with his vessel, by the British, was recaptured near Lewes, Delaware, while accompanying them in a peaceable attempt to purchase supplies. Having been found with an armed force of the enemy, he was indicted at Philadelphia for high treason, and the charge was backed by strong circumstantial evidence. Mr. Binney defended him. As a matter of fact, the party had come ashore under a flag of truce, but the British admiral's certificate to that effect could not be put in evidence, and only one witness stated that he saw the flag. On the other hand, a number of the government's witnesses swore positively that they saw no flag. Matters looked serious for the defendant until it occurred to Mr. Binney to ask what was the direction of the wind as regards the place where the adverse witnesses were when they saw the party land. As the answers showed

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<sup>13</sup> N. E. Hist. and Geneal. Rec., 1893, p. 309.

## 1812-15] ACTIVE PROFESSIONAL LIFE

that the wind was blowing directly from the witnesses towards the landing party, so that any flag would have been blown directly away from them, and they could not possibly have seen it, the force of their prior testimony was broken, and the prisoner was acquitted.<sup>14</sup>

Of the effect of the war upon his own profession, Mr. Binney wrote as follows:

“The war brought its usual fruits, destruction to commerce and profit to the bar, whose interests are rarely injured by national adversity. This is one of the principal deductions from the general popularity of the profession, and one of the reasons why it receives more respect than love. It flourishes while other callings are distressed. But lawyers did not make the war, and their agency diminished its mischiefs by keeping the current of the law unobstructed.

“The usual incidents of war were mixed up with some extraordinary embarrassments caused by our former non-intercourse with England; for all American property that arrived in the United States from England, if it sailed after the war broke out, was as liable to confiscation by our own government as it would have been to condemnation if captured by the enemy. A law of Congress, however, relieved our citizens; but to obtain the relief required the intervention of the bar, and here again they profited.”

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<sup>14</sup> *United States vs. Pryor*, 3 Wash. C. C., 234.

## V

ACTIVE PROFESSIONAL LIFE (CONTINUED)—ELECTION  
TO CONGRESS

1815–1833

IT has been attempted, in the previous chapter, to give some idea of the beginning and development of Mr. Binney's active practice at the bar, but in truth the twenty-five years which followed his term in the Legislature furnish little material for biography. He argued many cases, some of them of permanent importance, but all of comparatively little interest to the world at large; as one of the counsel of the Bank of the United States, he wrote many opinions on points of commercial law; he performed the duties of a citizen for five years in Councils; and also as an officer of various institutions for philanthropic, educational, or other public purposes; he was a man of mark in the community; but his life was in no way eventful. Of this fact no one was more conscious than himself, for although he loved the law as the great peace-maker among men, he cherished no illusions in regard to the lawyer's life.

"If a lawyer," he wrote, "confines himself to his profession, and refuses public life, though it be best for his family, and therefore for his own happiness, it makes sad work with his biography. You might almost as well undertake to write the biography of a mill-horse. It is at best a succession of concentric circles, widening a little perhaps from year to year, but never, when most enlarged, getting away from the original centre. He always has before him

the same things, the same places, the same men, and the same end. It is surprising to what an extent he has the same clients. His work is always the same in kind, and he pursues the same method of doing it. One trial is very much like another, and one speech of a lawyer very like all the rest of his speeches. Every question in the longest life at the bar comes within the range of one or two inquiries,—Does the thing in controversy belong to A or B, or has C done something to D which he ought not to have done? And after a lawyer has for thirty years employed himself in such inquiries, he may write his life in a single sentence,—He spent his time in investigating facts, which when known did not make him any wiser, or in investigating principles which were of little use but to enable him to investigate and apply the facts. At least, such ought to be the case to justify the sneer which is commonly directed against the mere lawyer. This, indeed, constitutes the great drawback from the profession of the law, not merely that the life of a lawyer has great sameness, but that the investigations which cost him the most time and labour do not in the slightest degree increase his stock of useful knowledge. The physician in the practice of his profession, and at the bedside of his patient, investigates facts which instruct him in the general laws of pathology and in the general effects of medical treatment. He learns something for application in other cases, to soothe the pains of humanity, or to assist him in the investigation of some general truth not yet perfectly developed. His profession is also largely connected with investigations of profit in many departments of nature,—mineralogy, botany, zoology, and the like. But the lawyer's facts are unproductive of all benefits, except to the fortunate client. When the cause is tried, the facts are of no more importance to the lawyer himself than last year's price of calicoes, nor to the rest of

mankind perhaps half so much. They are forgotten as soon as the verdict is given, and well for the lawyer is it that they can be forgotten.

“The more a man is a lawyer, then, the less he has to say of himself. The more causes he has tried, the more time has he lost. The more facts he has investigated, the less he knows. The biography of lawyers, however eminent, *qua* lawyers, is nothing. Such men have been in some instances connected with political life, and with the great actors in it, and a few have been deeply tinctured with letters and have been part and parcel of the world of authors. This is another matter; but the life of the best practical lawyer that ever lived, if confined to the history of his practice, or to the history of his social and intellectual march through the world within the proper limits of his profession, would in general be truly summed up as I have summed it.”

To proceed, however, with the brief record of these busy years, it may be noted that by the close of the war with England Mr. Binney and his personal friends at the bar were in possession of all that the profession of the law could at that time bring, whether of reputation or of gain. Those who had been leaders fifteen years before had in a great degree retired from active practice, and in a few years afterwards most of them had passed away. Though closely occupied at the bar, so closely that he had had to cease reporting the Supreme Court decisions, a work in which he took a very keen interest, Mr. Binney served as a member of Select Councils from 1816 to 1819, a service which meant a sacrifice of time and personal comfort, as he had no taste for public life, nor any desire to make this unpaid office a stepping-stone to something higher. After his term in the Legislature he had been repeatedly asked to be a candidate for Congress, but had “uniformly and obstinately declined.” His opinion of



American public life, as expressed in a letter to his friend Pickering, in February, 1815, was this:

“Public life is in the United States what it is, I believe, in no other country in the world. In other countries it is a profession. It has its peculiar and permanent rewards of wealth, reputation, and power, in each of which there is perhaps a sufficient recompense for the individual, his family, and his friends. Here I need not say what it is to you, who know what have been its fruits to one of the purest and wisest statesmen of our country. I may be excused for saying that there is no individual in this people who is held in more veneration by myself and my friends than your excellent father,<sup>1</sup> or whose history—I mean, of course, the history of his public rewards—reads a more decisive lesson upon the nature of the public profession in America. He has shown that to be a pure, honourable, lofty statesman it is necessary to take up the cross and despise the shame; and what young man, unless he is elected to be an apostle and a martyr, and is gifted with their spirit, will take up the one or encounter the other?”

Whether this view was wholly correct may be open to question. It is to be hoped that it is less correct, at least in some respects, as regards public life at the present day than it was in 1815; but, correct or not, it was sincerely held, and is referred to merely to point out that Mr. Binney's five years of service in Select and Common Councils involved a real sacrifice to what he thought his duty as a citizen. Such sacrifices, however, were not uncommon at that day, and they indicate that, small and plain in appearance as Philadelphia then was, there was proportionately far more public spirit (of the self-sacrificing kind, the only kind that is worth having) then than now. These sacrifices on the part of the best citizens bore

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<sup>1</sup> Hon. Timothy Pickering.

good fruit, the character of the municipal officers being such that the city was as honestly and capably governed as any in the world at that time. Were the same public spirit prevalent to-day, with the greatly increased opportunities for municipal activity, no Philadelphian would have any cause to be ashamed of his city. If the City Councils, for instance, had among their members a fair number of the leaders of the bar, the men in most active practice, and a similar proportion of the most prominent men in other lines, what might not Philadelphia become? To say that they could not be elected is to confess that popular government is necessarily a failure. The only other explanation of their exclusion from the city government is that they are unwilling to make the sacrifices which participation in it would involve.

In 1816 Mr. Binney was selected to aid Mr. Ingersoll, then Attorney-General, in the trial of Frederick Eberle and forty-eight others<sup>2</sup> for conspiracy to forcibly prevent the use of English in the services at Zion German Lutheran Church on Fourth Street. The congregation had become so far Americanized in the course of years that a large number of them wished to have the services conducted in English to a certain extent, though not to the exclusion of German. The German party, however, would take no compromise, and circulated a paper stating, among other things, that they would resist all use of English "mit Leib und Leben." The threat was carried out, so far as physical violence was concerned, though without actual bloodshed. At the trial the fierceness of the German party abated somewhat, and they attempted to prove that "mit Leib und Leben" was a mere figure of speech, indicating the use of only as much force as the law would allow; but there was enough evidence to show

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<sup>2</sup> See *Commonwealth vs. Eberle*, 3 S. & R., 9.

## 1816-23] ACTIVE PROFESSIONAL LIFE

an actual intention to exemplify the sentiment afterwards expressed by Bismarck,—“*Wir Deutschen fürchten Gott und sonst Niemand in der Welt*,”—and the defendants were convicted. They were afterwards pardoned, however, the governor being a man of their race.

In 1819 Mr. Binney purchased a summer residence on the banks of the Delaware, at Burlington, New Jersey, then a favourite resort of Philadelphians, as it was easily reached by steamboat and of course very much more quiet and rural than it is now. This remained the summer home of his family for nearly thirty years, though he himself was rarely there for many days at a time.

In 1821 he was one of the founders of the Apprentices' Library and its first president.

In the same year he argued the leading case of *Laussatt vs. Lippincott*,<sup>3</sup> wherein it was held that where goods are delivered to a factor for sale, and he deposits them with a broker or other sales agent in the ordinary course of business, and advances are made in anticipation of sale, the principal is bound by the transaction even though he may not ultimately receive the money, or though the sale may not be on the terms on which he ordered it to be made.

The case of *Lyle vs. Richards*,<sup>4</sup> argued in 1823, is of great importance in Philadelphia as settling the title to the Bush Hill property, originally a country-seat of the Hamilton family, but now a closely built portion of the city. The case, an action of covenant on a ground-rent deed, concerned the construction of a devise with contingent remainders in tail, and the validity of a common recovery which Mr. Binney had himself conducted in 1814, and which was held to have

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<sup>3</sup> 6 S. & R., 386; s. c., 1 Am. Lead. Cas., 668.

<sup>4</sup> 9 S. & R., 322.

been well suffered. Apart from the financial importance of the case, the opinions are also of great interest as treatises on the transmission to Pennsylvania of the common law in regard to real property. It was in this case that the court acknowledged the eminence of several departed worthies of the bar, and especially of Edward Tilghman.

Although devoting himself almost exclusively to his profession, as far as business matters were concerned, Mr. Binney was far from indifferent to those great industrial developments, which, especially in the matter of transportation, distinguished the period in which he lived. Thus in 1823 he was one of the incorporators of the first Pennsylvania Railroad Company, chartered to build and operate a railroad from Philadelphia to Columbia on a system invented by the celebrated engineer, John Stevens, of New Jersey, a connection by marriage of Mr. Binney's. Steam-railroads can hardly be said to have yet existed, for although Stephenson had made his first successful trial of a locomotive in July, 1814, the Stockton and Darlington Railway, the first road in the world to carry passengers and goods by means of a locomotive, was not opened until September 27, 1825. The Pennsylvania Railroad Company of 1823 was apparently met by the same problem that at first confronted its namesake of 1846,—viz., lack of the necessary capital; and as the plan of obtaining subscriptions from municipal corporations was not yet in vogue, the enterprise had to be abandoned<sup>5</sup> and the charter allowed to lapse; so that the same corporate title was available for adoption twenty-three years later by another company.

In 1824 Mr. Binney's oldest son, at that time the only one, entered Yale College. Many other parents have doubt-

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<sup>5</sup> A railroad to Columbia was built by the State about 1830.

less taken an equally keen interest in the mental and moral training and development of their sons, but comparatively few whose burden of professional cares and duties was equal to Mr. Binney's have been willing to give to that training and development as constant and close personal attention as he did. From October, 1824, when he left his son at New Haven to begin his studies, until September, 1828, when he was present at his graduation, Mr. Binney wrote to him every week, saving only when they were together, or in the very few instances when ill health or the pressure of work made writing an impossibility. The sacrifice of time and comfort which these letters cost is shown by frequent references to the circumstances under which they were written, often late at night, when mind and hand were alike wearied by prolonged labour, sometimes before breakfast, and two or three times while waiting in court, "during a bombardment of reports, Acts of Assembly, and so forth;" but even if he had to "steal almost from necessary repose" the time required, while smarting eyes and ringing ears showed the strain of continuous work, the father could yet say, "Nevertheless, it may be of use to you, however written, and it is the hope of this, my dear boy, that makes my fingers fresh for the pen when my body and almost my mind are exhausted by daily labour." The correspondence had a double object, to enable the father to keep in touch with his son through every step of his college career, counselling, suggesting, inquiring, and sometimes criticising, and to accustom the son to express his thoughts fully and freely in writing on any subject which might come up. In the way of counsel every part of the field was covered, not only as to studies, but as to health, exercise, eating, sleep, dress, use of money, keeping accounts, handwriting, tricks of manner, formation of friendships, social duties, religious observances, and every detail that bore on the development of

character and personality. A less positive character than that of the son might perhaps have been dwarfed by the very pressure of such minute and detailed oversight and control, or a less obedient nature might have rebelled against it, but in this instance the course pursued seems to have been altogether fitting, and in any event the constant invitation to the freest expression of opinion in reply provided a safety-valve in case the pressure should ever be too severely felt. All the letters display not merely deep affection and interest, but the fullest confidence in the son to whom they were sent. Thus where one letter had been thought to show apprehension in regard to the course of study pursued, Mr. Binney wrote:

I had no *apprehension*. My object was to prevent an occasion for any. It would by no means answer to apply such a rule to my letters, that my animadversions upon an error spring from a supposition that you have fallen, or are about to fall, into it. I have endeavoured, I fear with no great method (such are the other demands upon my time), to make a chart of the seas through which you are sailing, or must sail hereafter; and I have, in execution of this design, pointed out the deep and safe waters, and the currents and shoals that are unsafe. I have had no apprehension that you were already in the currents or upon the shoals, nor that you were immediately in danger of being there; but I point out the evil to you, as the maker of charts does to the navigator while he is still on shore. I have little doubt that you will avoid most or all of them, perhaps not the less because I have pointed them out to you.

In these letters Mr. Binney made no secret of his intense desire that his son should make the most of every opportunity for mental and moral development that his college life afforded. At times this desire came to the front in such words as, "My heart is absolutely anchored to the hope that you will be the first scholar in the class," or, "I absolutely hunger and thirst to see you a first-rate Latin and Greek

scholar, and mathematician, and anything else you please," and, as more than one letter shows, the scholarship which he had in mind was something more fundamental than merely what might be shown by college examinations and be rewarded by college honours.

That the son was intended for the bar seems to have been practically settled before he entered college. It is occasionally alluded to in the letters, especially those written towards the end of the college course, yet such was Mr. Binney's belief in the necessity of the collegiate education as a foundation for the professional, that the letters are concerned almost wholly with the former, and legal matters are scarcely ever referred to. But one of Mr. Binney's numerous cases is mentioned, and that in consequence of his son's inquiry about it. Public matters are rarely alluded to, and family matters at no great length. Nearly every letter is devoted to a discussion of some topic bearing directly on the son's studies or the development of his character.

The career of Horace Binney, Jr., both at college and in after-life, amply rewarded all his father's care and realized his fondest hopes. He not merely attained the highest college honours, and a very unusual breadth of scholarship, but developed a character remarkable alike for strength and purity. He was not, it is true, favoured with his father's opportunities for winning professional distinction, but he was always recognized as a thorough master of his profession, and showed conspicuous ability in every task which he undertook, whether as a lawyer or as a citizen.

These letters to his son give some glimpses of Mr. Binney's life in 1824-28. On February 2, 1825, he wrote:

At home I have to record a Wistar party on Saturday evening last, where I had the pleasure of seeing an assembly of about a hun-

dred of the most agreeable and well-informed men, strangers and residents, to be found in our city. . . . There were so many that it was not possible for me to say more than a word to any one, but they engaged themselves with others, as they found most agreeable. Mr. Cooper, the author of "The Spy," was also there; Mr. Ticknor, the professor of modern languages at Cambridge; Major Long,<sup>6</sup> Mr. Say, etc., the gentlemen whose journey to the sources of the St. Peter you saw lying on my table; in fine, all you know, and a great many you don't, even by name or description.

In the summer of 1825 Mr. Binney visited Niagara in company with his oldest daughter and Miss Dale, the daughter of his friend, Commodore Richard Dale, one of the heroes of the "Bonhomme Richard." Two letters give some idea of the impressions received on this trip.

NIAGARA FALLS, July 3, 1825.

We arrived at this place last evening, after a delightful ride from Albany. . . . The ride as far as Utica is thro' the beautiful valley of the Mohawk, which possesses as much interest to the lover of the picturesque, as well as to the lover of agriculture, as you can imagine; and when you connect with this the lakes of Skaneateles, Cayuga, Seneca, and Canandaigua, over or on the shores of which you pass, and which are sheets of the purest water, with beautiful shores and with beautiful villages on them, you may suppose the ride has been a delightful one. But all, all fades before the scene which I have just viewed, and which is distinctly visible from the window of the room where I write. I am, as my date shows, on the British side, and in the dominions of the British sovereign. On this side you are supposed to have the best view of the Falls, it being the side on which the Horseshoe Fall, as it is called, makes its plunge.

The mass of beautiful green water constantly tumbling over

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<sup>6</sup>Major Stephen H. Long, of the Topographical Engineers, United States army. In 1819-20 he commanded an exploring expedition in the West, reaching the Rocky Mountains and making considerable additions to the geographical knowledge of the day.



## 1825] ACTIVE PROFESSIONAL LIFE

this part of the fall makes it a particular object of attraction, and you can stand on Table Rock in perfect safety close by the edge of it. Everywhere, however, it is magnificent beyond description, and it is so vast, and at the same time so well proportioned, if I may so say, that half the observers are at first look disappointed. It is only when, after a second and a third visit, the mind comprehends all the details of this vast object,—the quantity of water, upward of one hundred millions of tons hourly; its great breadth, about three-quarters of a mile, or as wide as the Delaware at Philadelphia; its depth, as great as the height of Christ Church steeple; the ceaseless tumbling of this mass of waters into the profound abyss; the continued rising of the vapour; the foaming, tossing, hissing, and howling of the water; and above the falls, for two or three miles, a succession of falls or rapids, over which the waters spring emulous to form part of the great cataract,—it is only after thinking of the union of all these that the impression of their magnitude becomes awful. One day you must see them: they shall be a reward for your college victories.

ALBANY, Saty. 9 July, 1825.

We arrived here last evening from the Falls of Niagara, and go over to Lebanon this afternoon, hoping to see you at New Haven on Thursday or Friday. . . . No accident has occurred in a ride of more than 600 miles to disturb the security and pleasure of the journey. We have seen a great deal, of which many people talk as if New York contained *les sept merveilles*. I have not seen *that*, nor, indeed, anything but the Falls of Niagara, to excite wonder; but there is the appearance of great activity, and in a short time we may expect some refinement, of which at present there is a very natural scarcity.

On December 28 Mr. Binney presided at a meeting held in the Supreme Court room to urge the construction of a breakwater at the entrance to Delaware Bay, many vessels having been lost there every year on account of the lack of any harbour to take shelter in in stormy weather. This movement brought about the Act of Congress of May 23, 1828,

providing for the construction of the breakwater, which was begun the following year.

*(From a letter of March 22, 1826.)*

Professor Everett has made a speech in Congress, which has made more noise than from the printed sketch it deserves. He has uttered in it a sort of confession of faith on the subject of Slavery, that was gratuitous, not at all called for by the occasion, and will make him infinitely odious to many people who wished him well. He says that servitude, more or less mitigated, is inseparable from the conditions of human nature; that Christianity presupposes it, and provides for it, by saying, "Slaves obey your masters;" that the Southern slaves are better off than the European peasants, etc., etc. This is either false, or nothing to the purpose in favour of slavery, which is an institution that ought to be regarded as both an evil and a sin; for unless it be so regarded, due exertions will never be made to get rid of it, and it will finally vent itself in a tremendous volcano, that will overspread with its lava the whole Southern country, as it has done the island of Haiti. I wish well to the South. I think no man does who encourages its people to perpetuate the institution of slavery.

*(From a letter of July 20, 1826.)*

Nothing is stirring among us, unless it may be orations and ceremonials in celebration of the two ex-Presidents. There is something very extraordinary in the *coincidence* of these deaths; but to those who were living twenty-eight years ago, and were of an age to understand and remark the political events of the day, the most extraordinary feature in their history is that of a joint or consociated celebration. Their tempers and dispositions towards one another would at one time have made a very tolerable salad, though I do not mean to say which was the pepper and vinegar, and which the oil; but it never entered into my conception that it would ultimately settle down into such a homogeneous mixture as to admit of one and the same apotheosis. You must understand me, my son, however, for I

will not be instrumental in conveying to you an error of any kind, and therefore I would not have you think that I mean to sneer at these celebrations. Mr. Adams and Mr. Jefferson were both distinguished men of the Revolution, and then and for some years after walked hand in hand. They may be celebrated in common during this, perhaps the best and most useful part of their lives; and they may be celebrated for great properties. I think, however, candidly, that justice will not be done to Mr. Adams by any such common celebration. He deserves to be spoken of by himself, and in my humble judgment as a much wiser, stronger, and better man than Mr. Jefferson; I mean better for the great interests of our country. He was a very downright and outright, as well as upright man, full of passion and not exempt from prejudice. Consequently he showed all his failings and showed them in the strongest lights. But he was withal a most honest man, a thoroughly read statesman, and a man who could no more be turned from his purpose than a lion. Mr. Jefferson I ought not to speak of; he has been the steady, undeviating, and but for his recent death I would say insidious enemy of my profession in its highest walk, the bench, the judiciary. I confess myself strongly prejudiced against him. He was accomplished in all the arts that make intercourse with a man delightful, so his friends say. This people may say that he was equally accomplished in all the arts that captivate the popular heart, and subdue it to the purposes of the politician. I lived when young in such circumstances as not to be able to praise him for this. In the history of American *parties* he will have with posterity the precedence of Mr. Adams, but I cannot doubt that in the history of American Independence, although Mr. Jefferson wrote the Declaration, Mr. Adams will be commemorated as foremost and the most strenuous in its achievement.

Mr. Binney was a delegate to the General Convention of the Episcopal Church in 1826 and 1829. At the former he wrote the report of the Committee on the General Theological Seminary, which had been in existence barely nine years, and was still considerably in need of funds. The re-

port recommended that the dioceses be asked to join, in proportion to the number of clergy in each, in raising the sum of twenty thousand dollars, in order to restore to the endowment fund what had been advanced from it to the building fund, calling attention to the reproductive character of the charity in these words: "Most charities are consumed in the use. They are like the annual flowers of the field,—there remains little after them but the recollection of their beauty and grateful fragrance. But the endowment of a seat of learning, and, above all, of Christian learning, is the planting of a tree whose fruits are perennial, whose roots strike deeply into the soil, and whose branches, spreading over the earth, and shooting up into the skies, continue from year to year, and from age to age, to reproduce and to commemorate the gift."

The convention received this report with hearty approval, and adopted the resolution suggested, but the desired result was not attained by precisely the mode proposed, for the records of the convention of 1829 show that the dioceses of New York and South Carolina alone made any attempt to raise their proportionate shares of the fund, and only the receipt of a large legacy obviated the need of a renewal of the appeal.

Early in 1827 occurred the trial of the long protracted libel suit of Levett Harris *vs.* William D. Lewis, a *cause célèbre* at the time, but never reported. The defendant had been one of a firm of merchants in St. Petersburg, the only American house there, during the last years of the "Continental system," under which British trade was excluded from the Continent. His firm claimed to have been injured by certain alleged acts of the plaintiff, the American consul, in corruptly certifying English goods to be American, thereby enabling them to be imported and sold. During Monroe's

administration there was some idea of appointing Mr. Harris minister to Russia, and, to prevent a confirmation in case the nomination were made, Mr. Lewis printed a circular, entitled "Consular Corruption," containing detailed statements of alleged sales of certificates, and had it laid on the desk of each Senator. Mr. Harris was not appointed, and in January, 1820, brought suit for libel in the Supreme Court of Pennsylvania, at nisi prius, laying his damages at one hundred thousand dollars. He retained Mr. Binney as leading counsel, and with him Messrs. Dallas, Hopkinson, Charles J. Ingersoll, Sergeant, and Swift. Mr. Lewis, whose plea was truth and justification, was represented by Mr. Chauncey and Joseph R. Ingersoll. The testimony, relating to occurrences of several years before, and obtained from consular officials and persons engaged in foreign commerce, had to be taken under commissions in many parts of the world, so that the case was not ready for trial till seven years had elapsed. Among other distinguished witnesses was John Quincy Adams, then Secretary of State, who had been the minister at St. Petersburg at the time of Harris's alleged acts. So great was the public interest in the case, both parties having numerous and zealous adherents, that the judges who always tried Philadelphia cases (Tilghman, Gibson, and Duncan) preferred to keep clear of it, and selected Judge Huston to hold the court, he being from a remote county and beyond the reach of the local influence. The trial lasted from January 29 to February 14, about half the time being consumed by the arguments and the addresses to the jury. It resulted in a verdict for the plaintiff for one hundred dollars.

Writing on February 14, the day the case went to the jury, Mr. Binney said,—

They [the jury] have not agreed, and from what I hear I do not know that they will. It has been a cause of unexampled labour

and public excitement; and you may imagine the burden placed on me, when it was my post to conclude the cause, and I occupied with my speech from five o'clock of Monday afternoon [the 12th] until the same hour of yesterday, having in that time spoken seven hours. I endeavoured to do my duty, and I am gratified to learn that the impression was a good one. The court-house was crowded during the trial, and particularly during the last two days, when there were probably more than five hundred persons in the room. . . .

My health, as you may suppose, has suffered a little by the continuance of my labour and attention for so long a period. At some moments in the cause I have suffered intense pain; but now it is over, I am able to say to you that the consciousness of having endeavoured faithfully to do my duty effaces all recollection of what was disagreeable in it, even before my body is recovered from its fatigue.

At the Harvard Commencement of this year Mr. Binney received the degree of Doctor of Laws. While appreciating the honour, he was averse to making much use of the title, saying to his son, "In regard to the LL.D., it is not meant, of course, for an every-day dress, to be worn on the outside of letters, nor on the inside either, after the first salute. I have already been *doctored* to death, not an uncommon thing, according to Le Sage."

The Pennsylvania Horticultural Society was founded on December 21 of this year, and in the following June Mr. Binney, who had been one of its originators and had always cared a good deal for his own gardens, was chosen president for the first year. He held the same office again from 1836 to 1841.

One incident of his life during the twenties illustrates a state of public opinion which, to the Philadelphian of to-day, seems as far off in the past as the Golden Age. The city still had a large foreign trade, and the interests of commerce

## 1824-27] ACTIVE PROFESSIONAL LIFE

dominated. "On a certain afternoon," wrote Mr. Binney, "while I was sitting in my office, a committee of the Chamber of Commerce of this city came in, and asked me to draw a memorial for the body to the Senate of the United States, *against* the tariff, or protection. I told them that I would attempt it, with pleasure. (The work was wholly unprofessional, but patriotic, and to be so considered, as it was.) I asked when they required it for signature; and the answer was, 'To-morrow morning.' I replied that the time was short, but I would do my endeavour. I sat at the work that night, I will not say what portion of it, and gave it to them in the morning, the first copy, though pretty clean, and they copied and signed it without a word of alteration, and sent it to the Senate."<sup>7</sup>

Mr. Binney himself never saw the memorial again, but it is in print,<sup>8</sup> and states very clearly his views on the relations between the government and the citizens in regard to private affairs, views which, he insisted, were held by the old Federalists generally. It may be well to quote some passages.

The universal opinion of well-informed men has now established it as a general rule that the greatest degree of national wealth is to be obtained by leaving every one to the unfettered use of his own labour, skill, and capital; for it is in this way that individuals, of whom nations are composed, attain to the greatest prosperity. Obvious, however, as this general truth now is, it has been long in coming to light; legislation has had its dark ages as well as letters; and certainly they have continued longer to envelop the principles of national wealth than they did to obscure the laws of science or the beauties of literature. It is to be hoped that the dawn, which has tardily broken over the world in the department of trade, is not to

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<sup>7</sup> Letter to Dr. Lieber, September 17, 1869.

<sup>8</sup> Executive Papers, No. 94, 18th Cong., 1st sess., vol. ii. It is dated February 24, 1824, and opposes the tariff bill which became a law on May 22, 1824.

be immediately overcast, and particularly that the clouds which are again to darken it are not to proceed from a quarter where everything else, in regard to government, lies in the broadest light. If legislation acts upon the subject of trade, which, after all, is more safely left to the law of man's nature, by which he is incessantly stimulated to do the best for himself, and therefore for his country, it should act for the removal of impediments and restrictions, not for the creation of them. So much more unerring, however, is this law of man's nature than any political regulation, that it has been deemed the wisest course to abstain from public enactments altogether, and leave the hive to the industry and instinct of its labourers, without attempting to direct which cell shall be first filled, or to narrow the passage to one, or enlarge it to another, more than the wisdom of the labourers shall each for himself provide.

Whatever interference with the general freedom of trade is necessary for the purposes of revenue, and, still further, whatever provisions have justly for their object to sustain the government itself, by enabling it to withstand the shock of war, and with this view to promote, within its own bosom, the necessary resources for such a trial, all communities of men must submit to, and will submit to cheerfully. Laws enacted for these purposes are necessary exceptions to the general rule—not exceptions to its truth, for it is true without exception, but exceptions to its application; they are the price which nations pay for their existence as such; they tend to diminish the production of wealth, but they do what in every condition of the world has been found as useful as to produce,—namely, to secure the product. But beyond this the danger of legislative interference with trade becomes extreme. Be the wisdom and impartiality and foresight of the Legislature what they may, they are at no time, and under no circumstances, perfectly adequate to the task.

After some discussion of the details of the proposed law, the memorial concluded in these words:

To the principle of the law your memorialists are, however, more opposed than to its details. It seems to them to be a political



theory under the name of a duty bill; and *that* a theory which both argument and experience have exploded,—the theory that government knows better than an individual what is good for him, and can better employ his skill, his labour, and his capital; that it is wiser, and more economical, to buy dear of our own people than cheap of foreigners; and that it is competent, in these times, for a nation to grow wealthy and happy, with her gates opening outward to sell everything, but to buy nothing.

The memorial was unheeded by Congress, but it voiced the opinions of the leading association of Philadelphia business men at that day. One would as soon look for such a memorial from any such body to-day as one would for a request from the leading citizens of Charleston for the appointment of negroes to office.

Upon the death of Chief Justice Tilghman, in April, 1827, the bar of Philadelphia, with very few exceptions, united in a memorial to Governor Shulze, requesting him to appoint Mr. Binney as Tilghman's successor. Mr. Binney himself took no part in the movement, never writing a letter or saying a word to promote the design. In fact, he never even saw the memorial or knew its contents. Any other course of action would have been utterly at variance with his principles. "In the time of General Washington," he wrote, "and of his immediate successor Mr. Adams, I think it would not have been thought less strange for a man to solicit a judgeship than for a lady to solicit a gentleman in marriage. Had such an instance occurred, it would have been universally held to imply a want of both dignity and capacity, to have been a self-puffing and a self-seeking, which wholly unfitted the applicant for a judicial station. Solicitation of such an office by the individual concerned, or at his instance, was wholly unknown. But [Jefferson] led the way to a

change. From a tide-waiter to a minister plenipotentiary, from a marshal to the highest judge in the land, the people were enticed to interfere, by personal recommendations, in all appointments to office. They were sometimes prompted to do it by agents of the Executive, to divide or perhaps cast off the responsibility for an improper appointment. In the sequel every office became subject to the usage, and the interval was a short one between asking others to ask for you and asking directly of the appointing power. . . . I object to the practice in regard to any office. I abominate it in regard to judicial office, in which it can hardly be expected that the judge will stand erect and unbending between the parties after he has obtained his place by begging it as a favour from one of them."

The governor saw fit to appoint Judge Gibson, who had been one of the puisne justices of the court for nearly eleven years; but, to show some deference to the bar, he sent Mr. Binney a commission to the seat vacated by Gibson's promotion. The mere fact that the chief-justiceship had been given to another was nothing to Mr. Binney, and had the commission been offered during Tilghman's lifetime, as might have been done in 1826, when two judges were added to the bench, it would probably have been accepted, for although Mr. Binney had no particular desire to be a judge, he would have deferred to the wish of the bar, and service under such a chief as Tilghman would have been thoroughly congenial. As it was, while he had a good opinion of Judge Gibson in some respects, he did not think him well fitted to lead the court, and he could not have served under him without either sacrificing his own ideals of the performance of judicial duties or running the risk of stirring up jealousy and dissension. Wishing an impartial judgment on the matter, however, he did not decline the appointment without consulting some

of his friends, who were of one mind in advising against acceptance. Writing to his son, on June 14, Mr. Binney said,—

You have perceived probably by the papers the course I took in regard to the honour extended me by the governor. My friends are not quite right in supposing that I declined it *because* it was the lesser honour. I declined it *because* I was free to do so, and would have done the same with the other had it been offered and had I been as free to follow my own judgment. My friends and the bar asked the one and not the other. Their request would have been a law to me had it been granted, but still a hard law. Nine months absence per annum from the city and the rest in court (such is the fate of a judge of the Supreme Court) may be an honourable banishment from one's wife and children and domestic comfort, but it is still a banishment. I am still spared, and I hope without losing credit.

Mr. Binney had not merely a very high regard for Tilghman as a judge, but a very strong personal feeling also. Their natures seem to have been thoroughly in accord. Tilghman was precisely the kind of judge that Mr. Binney would have wished to be had he occupied Tilghman's place. The movement to make him Tilghman's successor was probably due in part to a belief that he was better fitted than any one else to maintain the traditions of the bench as they were in Tilghman's time; and under these circumstances it was only natural that the committee of the bar appointed to arrange for a eulogium upon the late chief justice requested Mr. Binney to deliver it. He did this on October 13, giving to his hearers a beautiful picture of a wise, learned, upright, conscientious judge; conservative, but not the slave of precedent; progressive, but always seeking to maintain the harmony of the law. Every sentence in the discourse was written *con amore*. "It gratified me to find that I gave

satisfaction to the bar<sup>9</sup> and was not thought to have done injustice to the character of Chief Justice Tilghman. I took infinite delight in showing what sort of a chief justice we had had for twenty years; and if it was remarked that the points of character on which I dwelt were those with which the qualities of his successor were most in contrast, I must reply that they were not selected with any such reference."

Early in March, 1828, Mr. Binney argued the case of *Conard vs. The Atlantic Insurance Company*,<sup>10</sup> at Washington, a case which he once alluded to as illustrating the stubbornness of President John Quincy Adams. A certain China merchant, named Edward Thomson, "imported immense quantities of tea, and under the bonding law as then existing he had placed it in the storehouses, and whenever he pleased he could take out as much as was necessary and bond it. Well, he made an arrangement with the keeper of the storehouses, and took out great quantities without putting it in bond at all; for then, too, as has been more frequently the case in later years, it was a question of 'who should watch the keeper.' Of course, this was all discovered. He had borrowed largely in New York, and given as security the bills of lading, etc., of cargoes that were coming to this port. Mr. Adams had the ships libelled at once on arrival here as property, and I was engaged by the insurance companies, the holders of the bills of lading. The law was clear, of course,

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<sup>9</sup> Mr. Binney himself did not think the eulogium beyond criticism. To his son he wrote: "I think less [of it] than some others affected to do. It must be recollected that such a composition is intended for delivery rather than for perusal, and the delivery appeared to produce some effect. My indifference to such matters is much nearer to frigidity than it ought to be to do the thing perfectly, and the dispositions of my mind are too much inclined to reasoning for a brilliant sally of imagination, the faculty which is fittest for funereal or patriotic commemoration."

<sup>10</sup> 1 Peters, 386.

but Mr. Adams insisted on his view, and sent Mr. Wirt up to fight me. I did not mind Mr. Wirt much, because I had the law with me, but he made a fine argument, and I won the case. So little did Mr. Adams know of commercial law that he insisted on taking the case up to the Supreme Court. I argued it there against Mr. Wirt again, and, *nemine contradicente*, the court held in my favour. So the government was put to all that expense by Mr. Adams's obstinacy." <sup>11</sup>

No physician saves the life of every patient, and no lawyer wins all of his cases. In both professions reputation may be won in defeat, and it may be said of Mr. Binney's defeats, which in number nearly equalled his victories, that not one of them marred his reputation in any way. One of the former was the case of *Lancaster vs. Dolan*,<sup>12</sup> argued early in 1829, and referred to by Mr. Binney, years afterwards, in his sketch of Edward Tilghman, who had won the case of *Newlin vs. Newlin*,<sup>13</sup> which *Lancaster vs. Dolan* overruled, thereby sweeping away "every vestige of authority from a married woman, during coverture, to alienate or pledge her separate trust estate." What Mr. Binney wrote of the mature consideration with which the earlier case had been decided, after a full argument, was within his own knowledge; but no one, even to-day, can read the report of *Newlin vs. Newlin* without seeing that Chief Justice Gibson had no warrant for saying that it "was hastily determined upon an exception to evidence." "He never," wrote Mr. Binney, "made a greater mistake, unless when he overruled the authority. . . . It has taken more than one Act of Assembly to patch the hole in the law that was made by *Lancaster vs. Dolan*, and it is not well patched yet." <sup>14</sup>

<sup>11</sup> Memoir of Henry Armitt Brown, by J. M. Hoppin, p. 112.

<sup>12</sup> 1 Raw., 231.

<sup>13</sup> 1 S. & R., 275.

<sup>14</sup> Leaders of the Old Bar, 59.

Judge Washington's death, on November 26, 1829, created a vacancy in the Supreme Court of the United States, and Mr. Binney's friends at once applied to President Jackson in his behalf. More than two years before this, Mr. Wirt, then Attorney-General, had stated that if a seat on that bench should become vacant, President Adams intended to nominate Mr. Binney, but whether General Jackson knew of his predecessor's intention or not, he was certainly not the man to be influenced by it. "I did hear," wrote Mr. Binney years afterwards, "that he sent an official friend to this city to inquire how the office would in my keeping 'suit the Democracy of Pennsylvania,' and that the answer was not comfortable. My friend Baldwin got it, and I saw his letter to my friend Chauncey, in which he did me the honour to say that I deserved it, but that he *wanted* it more."<sup>15</sup>

In regard to the two unsuccessful applications of his friends Mr. Binney wrote to his son:

There is a singular resemblance in some points between my expectation and my disappointment in each case, if expectation and disappointment it can be called. I declare with perfect sincerity that I never wanted either office, the chief-justiceship of the Supreme Court of Pennsylvania, or a seat on the bench of the United States, except as the elevated means of doing my duty, or rather of doing service to the public. If I had been called upon to accept either, I should have accepted it with a consciousness that I surrendered ease for labour, security for responsibility, and the delights of domestic life for a struggle for public favour. Had not these sacrifices opened to me a larger field of duty, I would not have thought an instant of making them. When I found that they were not asked of me, it may be supposed that I adhered with greater approbation of conscience to the pursuits of private life.

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<sup>15</sup> Letter to S. A. Allibone, March 24, 1871.

By the death of Judge Tod, in March, 1830, the seat which Mr. Binney had declined in 1827 again became vacant, and Governor Wolf wrote to him as follows:

Information has just been received here of the death of Judge Tod, of the Supreme Court. Should this report prove true, of which there can scarcely be a doubt, a vacancy will have occurred, which must be speedily filled. Will you, sir, consent to fill it? It is my earnest desire to give weight and character to our judiciary, whenever an opportunity shall be offered for that purpose; and as an earnest of that desire, permit me to say that it will afford me much pleasure to send you a commission, if you will say in reply to this that you will accept it.

Mr. Binney had a high regard for Governor Wolf, considering him one of the best governors that the State had ever had, perhaps the best of them all, and he had reason to believe that the governor had offered him the commission with a sincere wish that he should accept it, whereas Governor Shulze had apparently made a similar offer only because he could not well avoid it; but as regards the court itself the conditions were the same as in 1827, or possibly, since the death of Judge Duncan, even less to Mr. Binney's taste. Accordingly he did not hesitate to decline; and it was well for him, both personally and professionally, that he did so, though for reasons which he could not possibly have foreseen. Within nine years thereafter the tenure of judicial office during good behaviour was abolished in Pennsylvania, and a fifteen years' term substituted. No change of any kind which occurred in Mr. Binney's lifetime was more abhorrent to him than this, except the further step of making the judiciary elective. He would never have consented to retain an office which he held to have been most seriously degraded by the change. Deep as was his resentment in 1838, and ever

thereafter, at the insult to the law, it would have been embittered by the reflection that he himself was one of the judges whom the majority of the voters of the State did not think worthy to serve by the time-honoured tenure of good behaviour. And yet his resignation would almost certainly have been ascribed to pique or party feeling, and would have subjected him to criticism, the utter injustice of which would not have rendered it any the more pleasant. All this he was spared by declining the judicial robe, but his choice proved wise in still another way, equally unanticipated. In 1830 he looked forward to a speedy termination of his active practice at the bar, and he would have thought nothing less probable than that the pinnacle of his fame as a lawyer would be reached fourteen years later. Had he gone on the bench he would never have argued the Girard Will case, for though he would have resigned in 1838, it is inconceivable that, with his ideas of the permanence of the judicial office, he would have returned to practice as that modern anomaly, an ex-judge, under any consideration whatever.

By the year 1830 the strain of long-continued work began to tell upon Mr. Binney's health, and to his mind the change wrought by Chief Justice Tilghman's death had seriously affected the comfort and dignity of practice at the bar, so that he planned to gradually withdraw from court business. His wish to do so was intensified by the death of his oldest child, Mrs. Cadwalader, in October, 1831. From the day of her birth, when he was but twenty-five years old, she had been a part of all his happiness, of all his hopes. She was his constant companion, the intelligent and sympathetic confidante of all his feelings and opinions, so that he, who had leaned upon no one else, leaned upon her, and with her died the vivid interest in life which he had previously felt. Publicity of any kind, even the moderate publicity of court



## 1830-32] ACTIVE PROFESSIONAL LIFE

practice, became most distasteful to him, and his fixed habit of avoiding it as far as possible may be dated from this time.

When, therefore, as the election of 1832 approached, Mr. Binney's friends urged him to become a candidate for Congress on the anti-Jackson ticket, he could not plead professional duties; and though public life had no attraction for him, he saw that it would give him the desired opportunity to retire from active work at the bar. Aside from this, however, the political conditions of the day were such as to appeal to him as a citizen very strongly, so that the request for his services in Congress seemed to point to the pathway of duty. To a man of his strong Federalist principles President Jackson was the incarnation of many of the worst characteristics of Jeffersonian Democracy, besides displaying other objectionable qualities peculiar to himself. The establishment of the first United States Bank Mr. Binney held to be one of Hamilton's characteristically wise measures, proved to be so both by the stability of the currency during the lifetime of that bank and its successor, and by the instability which prevailed in the interval between the two. A great financial centre, regulating and controlling the action of the State banks, it gave to the paper currency (the ratio of which to the metallic was then seven times that of England and sixty times that of France) a reliability such as had been attained in no other way, nor could be by any means then proposed. He therefore regarded Jackson's recent veto of the bill to renew the second bank's charter as most unwise and reckless, and in this view all the leading business men of Philadelphia practically concurred. To the call to defend the bank, the interest of his fellow-citizens, and Federalist principles, therefore, Mr. Binney turned no unwilling ear; but he frankly told those who offered the nomination that he could not represent the opinion then prevalent in the city

in favour of a protective tariff. They replied that they wished him to be their candidate, and would trust him as to the tariff and everything else.

He made no campaign in furtherance of his own candidacy, but was the principal speaker at a meeting in the State-House yard on the afternoon of October 20 in support of the anti-Jackson electors. His address was a carefully reasoned exposition of the motives and tendencies of the Jackson administration, summing them up as the universal proscription of all opposition to the President's personal opinions and will, the prostration of the influence of all the departments of the government except that which he himself filled, and the concentration of all party affections in himself, to the exclusion and sacrifice of every other object of political desire. In short, the address was a powerful arraignment of bossism.

Two points in particular distinguish the address from a campaign speech of the present day. The first point was Mr. Binney's conviction that the fundamental principles of the government were at stake, and not any mere questions of administrative policy. He said,—

The object [the defeat of Jackson] is, in my judgment, of surpassing magnitude, nothing less depending upon its attainment than the continuance of institutions indispensable to our country, and the preservation of the Constitution itself. Your right to attain it through the medium of a free election may, thank heaven, be still exercised with safety. How long it will continue so, or how long the enjoyment of it will be of any value to you, are questions upon which the short remainder of the present year will probably furnish materials for a decisive judgment.

There can be no doubt that these words were no rhetorical hyperbole, but actually represented the speaker's sincere

belief. The Constitution had been in force but forty-five years, and its strength was not yet fully apparent. In view of what Jackson had already done in overthrowing the previously accepted doctrine of the permanency of the civil service, the pernicious effects of which overthrow are strongly felt to this day, it was but natural to fear that, if unopposed, he might proceed to overthrow the Constitution. Still, reasonable as the fear might then have seemed, one can scarcely conceive of its being entertained in regard to any President at the present day. The development of party machinery, controlled by unscrupulous bosses, has, it is true, made use of the very defective election laws of at least one State to throttle to a great extent the free expression of the popular will at elections, but this is exceptional, and only possible where partisanship is unusually strong; and what Mr. Binney referred to was not the action of a State machine, but of the national administration.

The other point was Mr. Binney's view of the duties of electors. He seems to have believed that even at that day the electors could regard themselves as representing, as the Constitution intended they should, principles rather than men, and that they might vote in accordance with their best judgment and not necessarily for the candidates of their party. The candidates of the National Republicans (or Whigs, as they came to be called before the campaign was over) were Henry Clay and Mr. Binney's friend John Sergeant; but while Mr. Binney admitted that the electors might reasonably be expected to vote for those candidates, he did not think them bound to do so. He therefore said,—

For whom the electors will vote, if chosen by the people, is at this time in my judgment an inquiry that ought not to be made. The only thing it is needful to know is that they will vote *against* Andrew Jackson. Of this the knowledge is certain. This is the great end

of the present effort. This will be the great reward of the effort if successful. In this result you will find your present safety. All else it is the duty of patriotism now to regard as of subordinate concern. . . . The ticket proposed is an anti-Jackson ticket, and under that name, with the opposition which it proclaims on its face, let us one and all, my fellow-citizens, rally round it and sustain it.<sup>16</sup>

The speech was published in full in the *United States Gazette* with an editorial account as follows:

His appearance in front of the stage was greeted with animated shouts of the vast multitude. Mr. Binney held the delighted audience almost in breathless attention for nearly three-quarters of an hour, in which he depicted the evils of the present administration of the general government, pointed out the remedies, and urged the citizens to unity of action, with a power of eloquence never surpassed in this city. Those who had listened for years to Mr. Binney at the bar, and had grown up in admiration of his talents and eloquence, confessed that they had not until this meeting been able to appreciate his power of language.<sup>17</sup>

The Whigs carried the city by nearly five votes to their opponents' three, Mr. Binney receiving over three hundred votes more than his colleague on the Congressional ticket, Mr. James Harper, in spite of the fact that the latter was a protectionist. The State, however, supported Jackson, who had more than three-fourths of the entire electoral vote of the country. The fight in behalf of the bank was evidently destined to be an uphill one at best, but it cannot be imagined that this fact had any effect upon Mr. Binney's determination to do his utmost when the time should come.

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<sup>16</sup> It is true that the opposition to Jackson was not absolutely united, Wirt carrying Vermont as an anti-Mason, and Floyd receiving the electoral vote of South Carolina. Yet Mr. Binney's words necessarily imply a belief that the Constitutional theory of the status of electors was still to be regarded.

<sup>17</sup> *United States Gazette*, October 22, 1832.

In the interval between his election and the assembling of Congress a year later, Mr. Binney argued and won two cases in the United States Supreme Court,—viz., *Magniac vs. Thompson and Lessee of Livingston vs. Moore*.<sup>18</sup> In the first it was held that an antenuptial settlement could not be set aside as a fraud upon creditors unless both parties to it had knowledge of the fraud. The latter was the case which sudden illness had prevented Mr. Binney from arguing in the court below, so that it had been practically won by Mr. Sergeant alone, after he had “talked the clock down” on the first day of the argument, as related by Mr. Binney at the bar meeting held after Mr. Sergeant’s death. It was an action of ejectment by the heirs of a former Comptroller-General of Pennsylvania to recover certain lands sold by the State under its liens on account of that officer’s indebtedness to it, and Mr. Binney and Mr. Sergeant had been retained by the governor by authority of the Legislature. The State’s sale of the lands was claimed to have been in violation of both State and Federal constitutions and the general principles of private rights, but the court held that all the proceedings of the State for the enforcement of its liens were legally unassailable, and that the purchasers had taken a good title.

About the same time was argued the case of *Girard vs. Philadelphia*,<sup>19</sup> in which the Girard heirs established their title to real estate acquired after the date of their relative’s will, a result which immediately led to the passage of the act of April 8, 1833, making a will speak from the date of the testator’s death. This is the case referred to by Mr. Binney in a note to his sketch of Judge Washington, *apropos* of attention on the part of judges. “I have known one judge, who

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<sup>18</sup> 7 Pet., 348, 469.

<sup>19</sup> 4 Raw., 323.

was a chief justice also, of considerable acuteness and of some name, who, on the bench, did not possess the faculty in any appreciable degree. He made few or no notes of either evidence or arguments; and often, when thought to be employed in noting an argument, was scribbling caricature faces upon his paper. To so great an extent did this faculty fail him, that, on one occasion, when he understood that I had advised the plaintiff's suit, but had not been retained to speak in it, and he was not satisfied with the argument of the counsel at the bar, he asked me, as *amicus curiæ*, to speak to the only point of law involved, which I immediately did, rather briefly. Three weeks afterwards I received a letter from him, informing me that my argument had satisfied the court, but that on sitting down to write the court's opinion, he found that he could not recall it, and asking me to restate it to him, which I did. He adopted it, and gave credit for it in his printed opinion."

## VI

## SERVICE IN CONGRESS—EULOGY ON MARSHALL

1833-1836

THE Twenty-third Congress (often called the Star Congress, on account of the number of eminent men in both houses) met on December 2. The previous August, Kendall's tentative circular to the State banks had foreshadowed the removal of the government deposits, the next step in Jackson's war on the United States Bank, and the removal itself soon followed. This sudden rupture of the long-established business relations between the government and the bank was, in Mr. Binney's eyes, a gross violation of the latter's legal rights, but this was almost as nothing compared with the effect of the removal upon the country at large, by necessarily involving a serious curtailment in the volume of business which the bank could safely carry on, and a proportionate contraction in the bank-note currency of the country. Had the bank been given a reasonable time in which to prepare for the removal of the deposits, the consequences, though serious enough, would not have been at all so disastrous; but the suddenness of the contraction which the removal necessitated, together with the great uncertainty as to the future of the currency, led at once to widespread commercial distress. Under these circumstances, it was in no cheerful mood that Mr. Binney betook himself to Washington.

That city had been for thirty-three years the seat of government, but it was still the "City of Magnificent Distances,"

and little more. The population was probably under twenty thousand, and residence there offered no attractions to cultivated people. The journey from Philadelphia was usually made by steamboat through the Delaware and Chesapeake Canal to Baltimore, and thence by coach; but when the water route was closed by ice the whole trip was by coach. In either case it took most of two days, and in winter it involved considerable exposure. The life of a Congressman, even from so comparatively near a point as Philadelphia, meant exile for almost the entire session, and a Washington boarding- or lodging-house was a poor substitute for home to a man of domestic tastes. Devotedly attached to his family (to whom he wrote at least a few lines every day, with scarcely an exception), Mr. Binney felt the separation very keenly, and the low spirits due to this cause found little consolation in the acts of the President and Congress. At that time, too, he underwent considerable physical suffering. In 1832, when the President removed the pension agency from the United States Bank, Mr. Binney was suddenly called upon for an opinion on the legality of the removal, and he spent an entire night in the examination of the statutes and authorities. The strain brought on a serious inflammation of the eyes, from which they had not wholly recovered when he went to Washington. He suffered greatly from his eyes during most of the session of 1833-34, while during the short session of 1834-35 he was rarely free from quinsy. Had he been able to feel that he was doing any real good in Congress, he would not have minded the sacrifice of health, comfort, and family life; but the very first weeks demonstrated that the current of prejudice and partisanship was probably too strong to make head against, and though he fought on as long as any ray of hope was left, he ultimately realized that he might as well have remained in Philadelphia. Aside from



the consolation which the performance of duty brings to every right-minded man, it is unlikely that any Congressman ever disliked his life in Washington more heartily than did Mr. Binney.

Thus, on the first day of 1834, he wrote:

I will not now trust myself with the theme of the New Year. I wish you all *multos et felices*, and hope there will not be many in which the felicitations so common to the day will fall upon my ear so heavily as they have done upon this. I paid a few visits this morning, as is the custom of the place: went first, in gratification of my own feelings, to Mr. Adams's, and afterwards to the President's, where there was an immense assemblage of every description of person and costume. When returning to go out of the presence chamber, I heard my name called by a sweet female voice behind me, and, as I turned, beheld with pleasure Mrs. Gordon (Emily Chapman) and her husband. She looked well, and was apparently as glad to see me as I was to see her: such a bond is there between acquaintances of the same city when they meet elsewhere.

The business in the house lags and is heavy. Mr. Polk is not half done, and when he will begin the other half I cannot tell. I shall follow him, if desired, but it is all uncertain.

Three weeks before this, on December 10, the Secretary of the Treasury's report in regard to the removal of the deposits had been referred to a Committee of the Whole. On the 12th Mr. Polk moved to reconsider the vote of reference, in order that the report should be referred to the Committee of Ways and Means, of which he was himself chairman and to which Mr. Binney also belonged. Realizing the danger of allowing a committee with a majority presumably hostile to the bank to pass upon this report in the first instance, Mr. Binney opposed the motion.<sup>1</sup> He urged that the

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<sup>1</sup> Cong. Deb., vol. x. 2173.

Secretary's communication of his reasons to Congress was a part of the contract between the bank and the government, and was intended to give the bank the benefit of a review of the Secretary's order by Congress itself, acting as an appellate tribunal. The Secretary could alone remove in the first instance; his act removed the deposits; his reasons were the justifications, if any there were; and the final judgment of Congress upon those reasons completed the course of the charter provisions for the security of the bank. The bank would not oppose an inquiry into its affairs or conduct for any proper purpose, but such inquiry had nothing to do with the course to be pursued in regard to the Secretary's report. The bank had a right by its charter to appeal from the Secretary to the House, but a further inquiry would constitute the House the prosecutor of the bank. The Secretary could not wish such an inquiry, as it implied that his own inquiry was inadequate, and that his allegations and reasonings were not good without further proof.

After some days of debate Mr. Polk's motion to reconsider was carried, and he then moved to refer the report to the Committee of Ways and Means, whereupon Mr. McDuffie, of South Carolina, moved an amendment, instructing the Committee "to report a joint resolution, providing that the public revenue, hereafter collected, be deposited in the Bank of the United States, in conformity with the public faith, pledged in the charter of said bank."<sup>2</sup> This presented directly the question of the sufficiency of the Secretary's reasons, and led to a still more prolonged debate, in the course of which Mr. Binney, on January 7, 1834, and succeeding days, addressed the House at considerable length.<sup>3</sup>

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<sup>2</sup> Cong. Deb., vol. x. pp. 2207, 2222.

<sup>3</sup> Ibid., pp. 2320, 2364.

His opening remarks show some of the intensity of his feeling upon the subject under discussion, and also contain a significant reference to his own independence of party, as well as to the fact, confirmed by contemporaneous letters, that he had already resolved, although the session was but a few weeks old, not to serve more than a single term. He said,—

I mean to discuss this great question, sir, as I think it becomes me to discuss it on my first entrance into this House; as it would become any one to discuss it having the few relations to extreme party that I have, and being desirous, for the short time that he means to be connected with the station, to do or omit nothing that shall be the occasion of painful retrospect. I mean to discuss it as gravely and temperately as I can; not, sir, because it is not a fit subject for the most animated and impassioned appeals to every fear and hope that a patriot can entertain for his country,—for I hold, without doubt, that it is so,—but because, as the defence of the measure to be examined comes to this House under the name and in the guise of “reason.” I deem it fit to receive it, and to try its pretensions by the standard to which it appeals. . . .

Mr. Speaker, the change produced in this country in the short space of three months is without example in the history of this or any other nation. The past summer found the people delighted or contented with the apparent adjustment of some of the most fearful controversies that ever divided them. The Chief Magistrate of the Union had entered upon his office for another term, and was receiving more than the honours of a Roman triumph from the happy people of the Middle and Northern States, without distinction of party, age, or sex. Nature promised to the husbandman an exuberant crop. Trade was replenishing the coffers of the nation and rewarding the merchant’s enterprise. The spindle, the shuttle, and every instrument of mechanic industry were pushing their busy labours with profit. Internal improvements were bringing down the remotest West to the shores of the Atlantic, and binding and compacting the dis-

persed inhabitants of this immense territory as the inhabitants of a single State. One universal smile beamed from the happy face of this favoured country. But, sir, we have had a fearful admonition that we hold all such treasures in earthen vessels; and a still more fearful one that misjudging man, either in error or in anger, may, in a moment, dash them to the earth and break into a thousand fragments the finest creations of industry and intelligence.

After briefly describing the currency system, he continued:

In an instant, sir, almost in the midst of the smiling scene I have described, without any preparation of the country at large, with nothing by way of notice but a menace, which no one but the bank itself, and she only from the instinct of self-preservation, seems to have respected, this most delicate of all the instruments of political economy has been assaulted, deranged, dislocated; and the whole scene of enchantment has vanished, as by the command of a wizard. The State banks are paralyzed; they can do, or they will do, nothing. The Bank of the United States stands upon her own defence. She can do, or she will do, nothing, until she knows the full extent of the storm that is to follow, and measures her own ability to meet it. Prices are falling, domestic exchange is falling, bank-notes are falling, stocks are falling, and in some instances have fallen dead. The gravitation of the system is disturbed and its loss threatened; and, it being the work of man, and directed only by his limited wisdom, there is no La Place or Bowditch that can foretell the extent or the mischief of the derangement, or in what new contrivance a compensation may be found for the disturbing force.

Sir, whence has come this derangement? It comes from the act of the Secretary in removing the deposits, and in declaring the doctrine of an unregulated, uncontrolled State bank paper currency. It is against all true philosophy to assign more causes than are sufficient to produce the ascertained effect. This cause is sufficient; that I verily believe has produced it; and I hope for the patient attention

of the House in my humble efforts hereafter to show that nothing else has produced it.

Sir, the Secretary of the Treasury has, in my poor judgment, committed one error which is wholly inexcusable; it is, in part, the error of the argument that has proceeded from the honourable member from Tennessee [Mr. Polk]. That error lies in supposing that there were but two subjects to be considered in coming to his decision upon the deposits,—the administration and the bank. The country has been forgotten. The administration was to vindicate its opinions. The bank was to be made to give way to them. The consequences were to be left to those whom they might concern; and they are such as moderate human wisdom might have foreseen, such as are now before us. While the administration is apparently strong and the bank undisturbed, the country lies stunned and stupefied by the blow; and it is now for this House to say whether they will continue the error, by forgetting the country here also, or will endeavour to raise her to her feet and assist her in recovering from the shaft that was aimed at the bank but has glanced aside and fallen on her own bosom.

Mr. Binney proceeded to explain the operation of the bank-note system and the contraction of the currency in consequence of the removal of the deposits, and he then reviewed and answered the Secretary's reason in detail, finally concluding as follows:

It ought not to be, it cannot be, that such questions shall be decided in this House as party questions. The question of the bank is one of public faith; that of the currency is a question of national prosperity; that of the constitutional control of the currency is a question of national existence. It is impossible that such momentous interests shall be tried and determined by those rules and standards which, in things indifferent in themselves, parties usually resort to. They concern our country at home and abroad, now and at all future times; they concern the cause of freedom everywhere; and if they shall be settled under the influence of any considerations but justice

and patriotism,—sacred justice and enlightened patriotism,—the dejected friends of freedom dispersed throughout the earth, the patriots of this land and the patriots of all lands, must finally surrender their extinguished hopes to the bitter conviction that the *spirit of party* is a more deadly foe to free institutions than the *spirit of despotism*.

An attack on the removal of the deposits was of course an attack upon the President, who had instructed the Secretary to remove them, and had made no secret of his hostility to the bank. Moreover, Mr. Binney did not hesitate to condemn the course pursued by the government directors of the bank, the President's appointees. At the same time the speech was purely an appeal to reason, and contained not a word of invective or abuse. With all his faults, "Old Hickory"<sup>4</sup> appreciated courteous treatment, and it is said that, having asked one of his friends about the speech, and being told, "He spoke very strongly, but he treated you like a gentleman," the President said, "Then you may ask him to dinner." What followed is best gathered from Mr. Binney's letter of January 10 to his son:

I give you a little recital for the benefit of Mama; but in confidence, unless you hear of it elsewhere. A friend of yours dined yesterday with the President. When he entered the room the President advanced, and, taking him by the hand, asked him to take a seat on the sofa by him, and began a familiar and friendly conversation with him. As other gentlemen came in, the President rose, shook hands with them, and then returned to his chair and talk. The party amounted to about thirty, of whom eight or ten might have been of the party opposed to the President, the rest his friends. After sitting by the President's side as long as consistent with good breeding, your friend got up and walked across the room to engage in general con-

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<sup>4</sup> Mr. Binney said that "Old Peperidge" would have been more apt a name, as Jackson could neither be bent nor split.

versation with the guests, and was remote from the President when dinner was announced. The President then called your friend by name, approached him, put his arm into your friend's arm, said, "Let me have the pleasure of shewing you in to dinner," and then placed him at his *right hand*, where he shewed him, as his aids at the end of the table did, a succession of the most obliging civilities, of the most marked and striking kind, from the beginning to the end of a really excellent dinner in every possible sense. This was amusing enough. Your friend had just finished a three days' speech, battering down to the best of his poor abilities a good deal of the Cabinet doctrines; speaking all manner of evil of it, but not calling any one a harder name than was necessary; and all this civility I have no doubt was intended to shew a sense of the urbanity with which the argument was conducted. It makes quite a talk here, and I suppose will go further.

It is reported that when Mr. Binney came to the White House, the President said, "Pardon me for taking the liberty to send for you, Mr. Binney, but I wish to say that I have read your speech, which is the most powerful that has been made on your side in Congress. I cannot, of course, thank you for the strength of your argument, but I am happy to know as an adversary one who does not conceive it necessary to employ invective against a public officer who believes that he, too, is discharging his duty faithfully."

As a matter of fact, while this anecdote has some foundation, the President could hardly have said that he had read the speech. He may have seen a condensed report of it, but no complete stenographic report was made, and in order that it should be printed in full (which was then thought very important), Mr. Binney was compelled by his colleagues to write it all out, a task not completed until some days after the dinner at the White House. The speech was regarded as a forensic triumph, and congratulations poured in, but

were powerless to reconcile Mr. Binney to public life, as some portions of his letters to his son show very clearly.

January 11. I am now writing out parts of my abominable speech. For all the praise of all the men that have lived or are to live, I do not think I would go through the labour of speaking this speech or writing it again. To speak it was bad enough, in all conscience, but to be forced to write it, in order to avoid disgrace, is too bad. I do not love praise enough for this, and, indeed, my mind has been so darkened by an incident of last autumn, that I almost hate to receive it. My conscience is my only praise, and that, as I well know, is no flatterer. Nothing is gained by praise. The more some men give of it, the more others hate you for it. You see I am very cynical. Mr. Sergeant, who writes me often (Mr. Chauncey never does), says he does not see now how I am to leave public life. I tell him that if I wanted bread, and Schively had a wheel, I would turn it in preference. If I could have passed my winter in Tristan d'Acunha with a chance of getting off in the spring, I should have preferred it. Public life! Public death is the better name for it. No, I have tried to do my duty, and I have laboured more in two months to do it than some men do in two years. I mean to have done with it.

January 15. As to my enviable situation, my son, when I shall derive my happiness from what I hear, and not from what I feel, and from the contradiction of all established habits and affections without contracting new ones,—above all, when I can be happy in a place where the greatest exertion does not attain the object it is directed to, and where the sight of our country's degradation is never a moment from before my eye,—then I may be happy in my present position. In the mean time the lament must be for the false estimate of happiness by the world, and not for the false constitution of mine.

January 20. I find all my powers crushed under a weight of mechanical labour, from which I have made a positive determination to escape. I am the slave of every man who wants anything done here, of any sort, public or private. I dread the mail as much as a negro dreads the whip of his driver.



February 4. We have had a brush again in the House to-day, and I had the good fortune to have the same attention given me as before. The party ranks were broken to some extent, and although we lost, it was by *one* vote only,—107 to 106. It was a mere question to refer the President's message on the refusal of the bank to deliver over the books and money of the Pension Fund to the Girard Bank. Our motion was to refer it to the Judiciary Committee, the other to refer to the Committee of Ways and Means. The mortifying thing was that the absence of our own men from the House, as is supposed, lost us the vote. It was after five when question was taken, and this has been the question two successive days. You may imagine how this agrees with my health.

February 5. The derangement of my health has perhaps alarmed you too much. The kind of life led here in the House is entirely out of the question. My mind is fully made up to it, and I do not mean further to expose my chance of future comfort in life by continuing at it. It is wholly impossible, and for reasons I will not commit to writing. My eyes suffer seriously, but I am in hopes to save enough of them for a basis on which to work a restoration hereafter. I intend if possible to return with Mr. Sergeant, but it is a lamentable condition to be unable to say whether this will or will not be practicable. It was beyond my power to conceive that the thralldom would be what it is.

(*To Hon. D. A. White.*)

WASHINGTON, 15 Feb. 1834.

I wish that my disordered eyes permitted me to reply as I ought to your kind letter of the 8th, but the change of habits to which I had been long accustomed, and the necessity of using candle-light to a much greater degree than I have done for some years, have so deranged me that writing has become painful, and I avoid all of it that the business of my seat in Congress enables me to do. Still I have so much pleasure to counterbalance the pain, while writing in acknowledgment of your recollection of me, that I mention it now

only to introduce a request that you will again write to me without caring for a regular reply. The argument on the deposits has received more praise than it deserves, and principally, I believe, because its pretensions were not such as to provoke criticism. The state of things here is inconceivably bad. There is a want of knowledge, certainly not surpassed in any State Legislature that I have known of, not meaning, however, to speak of particulars, but of the mass. Perhaps I ought to say a want of that kind of knowledge which the times require. There is, what is more to be regretted, a spirit of devotion to party that seems willing to surrender to it the Constitution, the laws, and the happiness of the country; and this is not surprising, since the object of party devotion is party itself. The selfish principle rules and overrules everything, and men care not what they sacrifice to it, as they believe or hope that they are to be gainers by all they sacrifice. It is said by gentlemen in daily debate that the disease is idolatry, and that Jackson is the idol. This is a mistake: the idol is party, party ascendancy and power, and he is at present only the priest, and I entertain no such expectation as that his death or retirement will bring men to their senses. Suffering may do so, for that will touch the diseased heart, and possibly soften it; but nothing else will cure the universal malady.

I will not express my disappointment to you at the general condition of things in and out of the House as I discern it here. It is sufficient for me to say, and this you will regard perhaps as evidence that the malady has also infected *me*, that this is not the place for me, and that I must go back, as fast as I can, to the more useful as well as improving duties that I gave up to come here. I think of you, and have always thought of you since our college life, with great affection, and it will really add to my comfort while I stay here if you will occasionally let me hear from you.

The debate over Polk's motion and McDuffie's amendment was the great debate of the session, and, in fact, the greatest that occurred during several sessions. It was participated in by many of the leading men on both sides of

the House, but ended on February 18 in victory for the Jackson party, as a letter of that date mentions.

We did not sit later than half-past five yesterday, and I, of course, resumed my argument in the Supreme Court this morning, with some freshness and pretty good effect.<sup>5</sup> I went on till one, when the court adjourned in consequence of the death of Mr. Wirt. On my returning to the House, I found the call for the previous question on the deposits, which we lost by four votes, and this cutting off the instructions proposed by Mr. McDuffie, and leaving nothing but the question of reference to the Committee of Ways and Means, we lost that by a vote of 130 to 96, several of the friends of the bank voting for the reference, because, as one of them said, nothing else could be done with the Secretary's letter. Having had no hope before, I have no less now.

A letter to Mr. Wallace, written on the 25th, gives some insight into the general situation as Mr. Binney viewed it.

If any change is to be effected, it must be by the people, and not, I fear, by their present Representatives, either here or at Harrisburg. The pride of opinion, the shame of apparent inconsistency, and *here* the application of an influence of the most potent kind, keep the present Representatives, at least some of them, in opposition to

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<sup>5</sup> *Carrington vs. The Merchants' Insurance Co.* (8 Pet., 495), a suit on a policy excluding liability for the consequences of seizure on account of trade in articles contraband of war. The contraband articles had been landed in Chile before the Spanish authorities seized the vessel, but as it had had false papers, the court held, under the English rule, that the seizure was authorized, and discharged the insurers. Referring to this case, many years afterwards, Mr. Binney wrote: "I once satisfied myself, and thought I had satisfied the Supreme Court (I did satisfy Chief Justice Marshall), that England has wrested (twisted) the old established law of nations as to contraband in her own favour. A predominant navy is a great law-maker on its own side. The Continentals are much more impartial, and more disposed to favour the weak, the neutral, and the peaceable, and so it ought to be." Apparently the chief justice was less influenced by Mr. Binney's argument than the latter had supposed, as the report of the case does not mention any dissent.

the known sense of their constituents. Still we are not without hope, as, indeed, who is? The great teacher is not only death, but disease which threatens death, and possibly the instruction may come in time to avert catastrophe. The doctors must not despair.

On March 4 Mr. Polk presented the majority report<sup>6</sup> of the Committee of Ways and Means, submitting four resolutions,—viz., that the bank should not be rechartered, that the deposits should not be returned to it, that they should be made in the State banks, and that the alleged corruptions and abuses in the bank's management should be investigated. On the same day Mr. Binney presented the minority report, which he had himself prepared, and which was also signed by Mr. R. H. Wilde, of Georgia, and Mr. Benjamin Gorham, of Massachusetts. The latter report reviewed the Secretary's reasons for removing the deposits, declared them insufficient, and stated that the deposits ought to be returned, whether the bank was to be rechartered or not. On March 12 the reports were taken up, and more debate followed, resulting in the passage of the Committee's resolutions on April 4. During this debate Mr. Binney wrote as follows:

March 19. I do not write to you about politics, but I am satisfied that party will prevent the remedy of the disease that party has caused. Keep yourself out of it. I perceive it to be the miserable concern I have always supposed it. When I am asked to do anything again for public good, I will answer that I shall be ready to do it when there is either no leader at all, or only one, or, if you please, *more* who concur. The strength of the administration is in the elements of which the opposition is composed, and they know it.

March 23. I have no copies of the minority report, except what are placed on my table, a few at a time, but I will try to send you some. There has been a trick practised in regard to this report

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<sup>6</sup> House Rept. No. 312, 23d Cong., 1st sess. The minority report is No. 313.

that is worthy of the men and of the times. Hitherto minority reports (which are a late invention) were regarded as part of the same document with the report of the Committee, numbered with the same number, printed and stitched together. But an order was given by a certain person to give the minority report an advanced number, by which the two reports became different documents, and are printed and stitched and sent separately, and consequently all who wish to have the majority side alone presented do not send the other. In general, the step has given dissatisfaction, but that is nothing. All I need say is, that I have not kept much of this kind of company. I am sorry the young men have come. The repetition of committee upon committee from our city <sup>7</sup> is not only a great annoyance, but—no matter.

Although Mr. Binney was undoubtedly the champion of the United States Bank in the House, as regards the issues between it and the government, he was not connected with the bank, officially or professionally, in any way whatever. Hence on March 15 he successfully represented the other side in *Bank of the United States vs. Donnelly*,<sup>8</sup> a case involving the application of the *lex fori* to a suit on a note, even though the result of a suit brought in the State where the note was made would have been different.

Up to this time the bank had consistently adhered to the policy of reducing its discounts and gradually curtailing its circulation (which exceeded \$18,000,000) preparatory to winding up its business, unless the administration party should recede from its refusal to grant a new charter. Mr. Binney thoroughly approved this course, and while he had

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<sup>7</sup> Meetings in favor of the renewal of the charter and return of the deposits were repeatedly held all through this winter, in Philadelphia and other cities, committees of citizens were perpetually arriving, and memorials being presented to Congress. Mr. Binney had little confidence in such demonstrations.

<sup>18</sup> 8 Pet., 361.

no direct correspondence with the president of the bank, Mr. Nicholas Biddle, he was kept sufficiently posted as to what the bank was doing. The strain of Mr. Biddle's repeated declarations was this: "The Allegheny hills may come down to the sea, but we shall not change an iota of our plan. Our friends can rely upon it. Others may change, but we cannot, must not, will not." Accordingly, whenever any of Mr. Binney's colleagues expressed a doubt of the bank's perseverance, he had no hesitation in declaring his thorough confidence in it. If the bank was to wind up its business without loss, within the time allowed, the gradual contraction of its circulation was a necessity, while the effect of such a contraction upon business was the surest means of arousing such a public opinion against the President's policy as would compel him to abandon it.

Suddenly Mr. Binney learned that Mr. Biddle, at the instance of Mr. Gallatin and others in New York, had agreed to let the State banks extend their discounts without being called upon by the United States Bank for the balances due it, up to a certain time. This half-way measure was in effect a complete reversal of the bank's policy, and an abandonment of its only practical weapon of defence against the administration. From the day that the news came Mr. Binney never spoke again in the House in regard to the bank's affairs. The following passages are found in his letters written about that time.

March 24. Such has been the extraordinary act of the Bank U. S. in making the agreement with the State banks at New York, that I am as much relieved from duty as if I were knocked in the head. My friend Mr. Chauncey has consented to a great mistake. I have written him and he has written me. *L'affaire est finie*. I mention this that you may be on your guard.

April 6. My investments are all as good as possible, but what

is to continue good is a question of deep, unfathomable doubt and uncertainty. There is so much nervous excitement here that at times I become affected myself, and think everything in danger; at other times, I cool myself in a quiet walk over the fields, and return with huge doubts as to the sober intellects of a great many on both sides. I have come to but one certain conclusion, and that is that my judgment as to political life has always been right. As a trade, it is a species of privateering under public commission. There is a difference between the craft. Some are pirates and buccaneers, some piccaroons and marauders, some a gentlemanly highwayman, who robs with a grace, and makes you a present of part of your own goods of which he scorns to strip you. But all—all who follow the trade—make a trade of it, and [the] trade has but one end, though the paths to it are various.

April 9. I shall be heartily glad to get home, and pray Heaven I may never return here. If I had leisure, I would try to awaken this country to such a state of feeling as would make it thought infamous to stay from the polls on any account. Men take care of their parchment deeds and certificates of stock, and let rogues go to the polls and destroy them. The field is there. If that is won, this House will be; if not, nothing here will restore the day. I speak for any portion of future time. Our children are disinherited by our supineness.

April 12. You will see the speech of Mr. Adams (suppressed by the previous question) in the *National Intelligencer* of the morning, and the obliging manner in which he speaks of me and of my argument, better than either deserve. I had a few days ago to differ with him and some others of our own side upon a small appropriation item to pay a clerk for arranging and making indexes to the Archives of Government in the Department of State. The discussion, which was sharply party, compelled me to speak, as I had determined to vote for it, and did not wish my vote misunderstood.<sup>9</sup> Many of the Jackson men voted against it, some of our friends voted for it. Such is

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<sup>9</sup> Cong. Deb., vol. x., pt. iii., 3566.

the state of feeling here, that it is probable we shall be a month on what used to be passed by the title. Unfortunately the debate began on the only item in the bill in favour of which I had said a word in committee. I regretted it, but I have that within which, if I stand alone, will make me do what I think right.

In April Mr. Binney was able to spend a few days at home, and the next three letters relate to what occurred on the return journey. President Jackson's extraordinary "Protest" against a resolution of the Senate, condemning his proceedings "in relation to the public revenue," had appeared on the 17th, and had caused considerable excitement.

WASHINGTON, 21 Apr. 1834.

DEAR H.,—

I am again safely here, having arrived last night at eleven. My journey was very pleasant, until we met the upward boat, which threw a letter on board from Baltimore, apprizing Webster of the preparation for him, and the consequence of which I foresaw as to myself. On our arrival we saw perhaps ten thousand persons lining the shores, flags flying, etc. Mr. Webster mounted the upper deck and addressed the multitude. I got out or was forced out of the boat, my baggage being taken I knew not where. After being hustled along to the outer verge, I heard my name called out to address the sovereign also; but being very desirous to avoid it, I went to the Exchange<sup>10</sup> and sat a moment with Mr. Everett on his way to Philadelphia. I then started to rejoin my *compagnons de voyage*, and took my way to Barnum's. As I turned the corner, to my astonishment Mr. Webster was at it again, and the street covered with a dense mass of thousands. When he finished, the same cry went forth for myself, as they supposed I was in the house, and, being recognized, I had no alternative but to say a dozen words, which I have already forgotten. The excitement, *hurrahs*, etc., etc., were extraordinary, and evidence of extreme irritation. I ask absolution of my good

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<sup>10</sup> The Exchange and Barnum's were then the leading hotels in Baltimore.



bishops for this Sunday's misconduct. Think of it, and think of what public life might make of me. When I got to Barnum's I was hot in every sense, and I scarcely knew myself any better than I was known. I am ashamed, and I am glad of it.

WASHINGTON, 22 Apr. '34.

DEAR H.,—

Your No. 126 is received. I am glad to be advised of your welfare to the close of the day that I left you. I have nothing to say, but that a great alarm for my eye, in which I took cold in the heat of the Baltimore crowd and in the cool of the night ride, is abated: it is nearly well to-day. The Sunday's work has finally made me smile, while at first it made me frown. It was a queer affair, and I am happy to find by the papers that they have made sense of what I said.<sup>11</sup>

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<sup>11</sup> "Messrs. Webster and Binney arrived yesterday afternoon in the steamboat 'Washington' from Philadelphia. Long before the steamboat touched the wharf the citizens assembled to the number of several thousands, and completely blocked up the approach to the boat. Mr. Webster addressed the people from the deck of the steamboat, but many endeavoured in vain to reach within hearing distance. After he concluded there was a general rush to Barnum's, where on his arrival he again spoke for a short time with his usual force and felicity. . . .

"When Mr. Webster closed there was a general call for Mr. Binney, who appeared and delivered some pointed and patriotic remarks. He said he had no fears for the result of the present contest. The people were competent to keep their public servants within legitimate limits; that usurpations always commenced by tampering with the public funds; that so long as the laws were permitted to govern we possessed the means to restrain authority within proper bounds, but that if the laws failed to afford the remedy for abuses, the people possessed the physical power to maintain their rights; that the Constitution and laws of the country must be sustained, peaceably if it can be done, by force if it is necessary.

"Mr. Binney made a happy allusion to the former prosperity of Baltimore, and the present depressed condition of trade, resulting from the experiment now making by the President. He concluded amidst the highest manifestations of satisfaction." (Baltimore Chronicle of April 21, reprinted in Poulson's Advertiser of April 22.)

If Mr. Binney's irritation at being compelled to speak was at all manifest, it was ascribed wholly to his indignation at the President's course. He is said to have spoken with unusual warmth of manner and enthusiasm.

WASHINGTON, 24 Apr., 1834.

MY DEAR H.,—

. . . This Sunday's folly gives me more pain than it ought to. I alternately smile and frown. They are, I find, lying about it, as they do about everything; you can readily imagine how one of my disposition feels under the connection between myself and any even involuntary abuse of the day. In those who know me perfectly it raises the suspicion of insincerity, and in those who do not it produces the belief that I am openly regardless of my duty. This letter you will of course see is written under the frown.

On May 1 occurred a debate on an appropriation for the salaries of ministers to England and Russia. The Senate had not confirmed the President's appointments, and it was generally understood that he intended to commission the ministers after the adjournment. Mr. Binney held that such an act would be an unconstitutional trespass on the Senate's prerogatives, and he opposed the appropriation, but it was carried.

The most important contested election of this Congress was that of Mr. Letcher, of Kentucky, an ardent follower of Clay, and afterwards governor of the State, against Mr. Moore. The majority of the Committee on Elections had reported in favor of destroying Letcher's majority by striking off certain votes, cast by admittedly qualified voters, on account of a failure of certain election officers to comply strictly with the law, though the irregularity was not claimed to have influenced a single vote. The Committee of the Whole reported that no decision could be made in favour of either party, and on June 11, when the question was before the House, Mr. Binney spoke against the report.<sup>12</sup> He pointed out that it was the constitutional duty of the House

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<sup>12</sup> Cong Deb., vol. x. pp. 4451, 4802-4819.

to decide the case upon the evidence, which was all before it, and made an exhaustive argument on the constitutional rights of voters, which he contended could not be taken away by official errors. The principles which he expounded were new to most of his hearers, but they were such as should always control the decision of election cases, especially to-day, when the official ballot system, by increasing official duties, has necessarily increased the risk of errors for which the voters are in no way responsible. Partisanship defeated his efforts, however, as it did in nearly every instance during his short Congressional career, and the committee report was adopted; but the victory was a barren one, as Mr. Letcher was triumphantly re-elected. A letter of June 13 says,—

We had yesterday a considerable dinner party, which terminated half-past eleven P.M., at our mess. Webster and myself being side by side, I told him what you said of his speech. You will have as much notion of what I last said in Letcher's case on Wednesday, by the sketch in the *National Intelligencer* of this day, as you would of a house by seeing one of the bricks. I spoke half an hour *con ira* and *con amore* too, and as an impromptu I was not dissatisfied with it.

On June 21 Mr. Binney spoke in regard to the bill to regulate the coinage, fixing that ratio of sixteen to one which in recent years has been so sacred in the eyes of Mr. Bryan and the Populists. It seems strange to read an argument against this ratio as too favourable to gold, the ratio of actual value at the time being 15.625 to 1. Viewed by the light of subsequent experience, Mr. Binney's speech shows the practical impossibility of long maintaining two legal tenders in circulation at the same time when neither is limited in quantity, but even he did not seem to have yet realized this, and the speech is distinctly in favour of a double standard at the market ratio.

His amendment was adopted, requiring a certain number of the gold coins of each year to be reserved and assayed to test their fineness. Nearly sixty-one years later he recalled some incidents of this debate, as follows: "When Tom Benton brought in his bill to debase the gold coin, to keep it from flowing to Europe, and supported an elaborate scheme based upon that idea, I examined the matter with some care, and was clear that it violated some truths of history and finance, but I hardly expected to speak, until J. Q. Adams came to my seat one day and said, 'Mr. Binney, are you not going to speak on this subject?' I replied that I thought speaking would do no good, but the next day, I think it was, I took the floor. The House was not more than a third full at the time, but they listened to me with great attention in a speech of perhaps an hour and a half. When I had done a gentleman took the floor to speak on the same side. The House suddenly filled as if by magic. Every member was soon in his seat, when they commenced such coughing and scraping of feet that the member could not go on. Then they called for a vote, and passed the measure without a pause. Here was an organic conspiracy to carry through this party measure without reference to argument or the honour of the country. It made an impression on me at that time, and showed how thorough party training had even then become."<sup>13</sup>

During this season Mr. Binney's seat was next that of Edward Everett, whom he knew well and esteemed highly, though not sharing all his views. He also necessarily saw much of Webster, the leader of the bank's cause in the Senate. While Mr. Binney had the highest regard for Webster's abilities, and would gladly have seen him President, thinking the failure to nominate him in 1836 a grave political

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<sup>13</sup> Memoir of Henry Armitt Brown, by J. M. Hoppin, p. 106.

error, he realized that Webster's chronic "Presidential fever" was a serious malady. He said to him once, openly, in the presence of Clay and others, "You can be the king of this country if you will simply let it be known that you are unalterably resolved never to be a candidate for the Presidency. You will always be Senator from Massachusetts, and such will be your hold on the people everywhere, by reason of your extraordinary ability, that you will have, while you live, the power of selection. You will be the Warwick, the king-maker."

With Calhoun also Mr. Binney was on good terms, widely as their views differed in regard to State rights and slavery. Years afterwards, when Calhoun's doctrines were about to be carried out in secession, Mr. Binney was able to recognize, from what Calhoun had told him, the fundamental character of the issue between the North and the South. It would be too much to say that in 1834 he foresaw the Civil War, but he fully realized even then that in the unhealthy state to which the intensity of party spirit had brought the country no satisfactory settlement of the slavery problem was possible. The impressions produced by the session as a whole may be summed up in the following letter to Mr. Wallace, written in November:

I am obliged by what you say in regard to the sketch of my remarks in *Letcher vs. Moore*. It is a little remarkable that the principles should have struck the House as new. New or old, good or bad, it is the same thing. We have long thought alike as to tendencies. When I consented to go to Congress I was for a moment deceived. I thought I saw evidence of convalescence, and was mistaken. Since the correction of that mistake, I have never yielded to a second delusion. Even the appearance of last winter did not mislead me. I have therefore washed my hands of it. I ought to say my fingers, for

I never got deeper than the first joint. The fittest language for men who have anything on board is, perhaps, the language of shipwreck, *suave qui peut*.

At the short Congressional session of 1834-35 the matter uppermost in men's minds was the likelihood of a war with France. In 1831 France had agreed by treaty to pay a large indemnity on account of depredations upon American commerce during the Napoleonic wars, but the Chambers had as yet taken no steps towards payment. The King had promised to appeal to the Chambers for the requisite appropriation, but had not yet done so, and the President's message had impugned the King's good faith. Relations were strained in consequence, and for a time war seemed extremely probable. Mr. Binney's brief letters to his son contain some allusions to the controversy, as well as to the administration's bill to provide for the deposit of public funds in State banks, and other matters which came up during the session.

December 14. My impression is that we shall have war with France in due time. The French minister takes the message in bad part, and I suppose so it will be taken. He declined the President's invitation to the usual diplomatic dinner, and says that if he belonged to the Chamber of Deputies he would not vote the appropriation for the treaty until the menace of the message should be recalled; and Congress will not recall it, but sustain it, at least in the House. The President's design in all this it is impossible to fathom.

On December 14 Mr. Binney supported a resolution to remit the import duties on locomotive engines, car-wheels, axles, springs, and other forms of railroad iron already imported or to be imported within two years. The measure had nothing to do with protection, as the articles in question were not made in this country, and it was merely a temporary aid to railroad enterprise, then in its infancy. The measure was

lost, probably for no better reason than that which now upholds the tariff on foreign works of art.

January 10, 1835. I spoke for about an hour to-day upon a claim of Commodore Hull,<sup>14</sup> as honest and just a claim as ever was stated; but Amos Kendall and the President would have been put in fault by its success, and there was no possibility of saving it. I doubt whether I shall again open my mouth during the session.

January 26 [in regard to an application of some acquaintance for an office]. No son of mine will have my approbation to any sort of connection—military, naval, civil, judicial, or otherwise—with this government while it remains as it is, unless he has an independence of fortune that will enable him to turn up his nose at it, and his back upon it, whenever his honour requires it.

January 30. The House has had no session yesterday or to-day on account of the death of a member. Since I have been here one man, an habitual drunkard, blew his brains out; two have died, notorious drunkards and one of them shamefully immoral. The honours are given to all, with equal eulogy and ceremonial.

January 31. You have heard of the madman's<sup>15</sup> attempt on the President. I thank Heaven it did not succeed. I believe nothing can be made of it but mere insanity.

February 7. If you will look at the *National Intelligencer* of Monday, you may find something to justify the opinion I have expressed of the great uncertainty of peace. A debate has sprung up to-day of a very singular character, begun, as on a former occasion, by Mr. Adams, and for a while it threatened great violence. It has a little cooled off, but the embers are beneath. The debate has been mainly with the administration men and the Committee of Foreign Relations. My impression is that the doubts of most may be ultimately changed by the violence of a few. Still, I may be mistaken, and therefore will say nothing as from me.

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<sup>14</sup> Commander of the "Constitution" in the War of 1812.

<sup>15</sup> A man named Lawrence, who fired twice at the President, the cap of his pistol failing to ignite the powder either time.

February 9. Notwithstanding my determination, I have been to-day drawn into a speech on the Ohio boundary line, in which I stand pledged for more. It is a fine question, and I am thoroughly prepared, but I loathe the operation in that House, tho' always most kindly listened to. I shall be glad when the session is over.

February 15. I hope to get home without another bout of quinsy, but I have my doubts. I have had sore throat nearly all the winter, in a quite unusual manner, sometimes very bad when I went to bed, and gone or nearly so in the morning. My fear is now that a bad attack may keep me out of the House to-morrow, when the deposit banks bill comes up, but it must be pretty bad to do that, after once already in Letcher *vs.* Moore speaking with it on me. I mention this merely to keep you from thinking, as the Irish soldier charged the Frenchman with thinking, that nobody was killed but himself.

The question came up on the 12th, when Mr. Binney argued against the measure in its original form, and proposed certain amendments, which were adopted, but afterwards reconsidered.

February 19. The rogues reconsidered me to-day on the deposit question, though I made a more conclusive argument to-day than on Thursday last. But I am quite indifferent. My amendment is still before the House. I have been drawn from my shell against my will, and except for the Ohio question shall not again leave it. So I think, though the friends around me will not leave me always free.

February 20. My friends here say that the Deposit Bill is destroyed, and at least the enemy put to open shame.<sup>16</sup> I do not believe either.

February 21. The news from France has agitated all who did not expect it. You have known my expectations from the beginning. You ought to know that my expectations of difficulty are not

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<sup>16</sup> The bill was not brought to a final vote.



much increased by the late news from France, that is, I do not believe France is so *enragée* as she seems. What is to be the immediate action of Congress I cannot tell. My neighbour must, I believe, prepare for an extra session. My lot will be to *suffer*, not to *do*. There is at present no intelligence from our minister in France; but it may be expected hourly, and then, or perhaps before, we shall again be prompted from the White House.

February 23. The French news has shortened some faces prodigiously. My own is pretty much of its former dimension. Everything here has satisfied me that the message has always been a most uncomfortable thing for the friends of the President. It has placed them in a position of great embarrassment, and they will be party-cally, as I shall be personally and politically, happy, if they can get out of the scrape along with the country. My happiness, however, will be increased by the safety of the country, and not of the party.

February 25. My time, tho' I rejoice that it is nearly expired, has been far less unpleasant than formerly. The position I hold here it would be agreeable to you to know. It has arisen from consistency, which even with those of moderate capacity, if accompanied with good manners, is of itself a considerable power. Meaning to disconnect myself from active party politics, I am of course gratified at leaving with a sentiment, in the members of the House, of something very like general good will. It would have been a pity to spoil what little reputation I have by two years of unwilling residence at this place.

February 26. I must stay here to the end. It is, however, to vote, for anything else is impossible. The disorder of the House is inconceivable: every one is rising at the same time to get in or on his bill or resolution, and no progress is made. I presume some of the necessary appropriation bills may fail, and it will be well if there is nothing worse.

February 28. We are in committee on the French relations, on which I do not intend to speak. The fact is that true wisdom, safety, and honour all direct the same course of saying nothing, and no one can safely trust himself with giving the reasons. We are in

a predicament of great difficulty from speaking rashly, and it ought, I think, to be left to run itself clear, the only way in which it can become clear, and every attempt to make it clearer will only trouble the waters still more.

On March 2, however, Mr. Binney was compelled to break his resolution of silence, and he spoke at some length upon the relations with France. After reviewing what had taken place, he summed up the situation as follows:

On the one side, sir, there has been a failure in a punctilio of time; on the other there has been a failure in a punctilio of personal courtesy—of courtesy to the person of the King, and possibly to the nation, but still a punctilio. And thus this nation is to forego the unanswerable claim that she has to a substantial performance of the treaty, and both nations are to forget their ancient friendship and the present and perpetual sameness of their great interests, commercial and political, to go to war upon punctilios of time and courtesy.

He argued that there had been no actual refusal to carry out the treaty, and hence no cause of war; that the delay necessitated further negotiation, which should be left to the President to carry on; and that Congress should not take action. The resolutions were adopted, however, but fortunately France took them in good part, and no harm resulted.

March 3. I had to speak yesterday on the French question, and got two things for my pains,—great praise and a severe quinsy. Whether I shall now be able to get on to Baltimore to-morrow is uncertain. I had to leave the House last night, and unless I am sent for I shall not go to-day.

March 4. [From Baltimore.] I have come hither to-day. My throat is no worse, and on the contrary a little better; but there are no means of advancing, either by the Chesapeake or by Columbia and the railroad. I have, however, a comfortable parlour and cham-

ber at Barnum's, and here I may stay till two hundred members of Congress have evacuated the place, as I am not one of those who will ride on the outside of a stage, nor go with fifteen *ins* on three seats. Now that Congress is over, I am patient, and that is what I have not been in verity for nearly two years. I said a word to you about my speech on the French resolutions. I had thanks and commendations on all sides, some very extravagant, but others most gratifying. Mr. Adams, who quoted some lines of Milton against me, without the least imaginable application (for he was on the borders of I will not say what), said it was splendid as well as able; but the source of my principal gratification was that in a house full there were a dozen Philadelphians who saw the House as silent as a church for three-quarters of an hour. They have given me the opportunity I wished of closing my connection with such public life as this. . . . Tell Mama I will come as soon as I can, and hope hereafter to be my own man and hers, more than I have been for thirty months.

On July 6, 1835, Chief Justice Marshall passed away, at but a few months less than eighty years of age; and on his birthday, September 24, Mr. Binney delivered before the Councils of Philadelphia a eulogy on the life and character of the great chief justice. The task of writing it was as thoroughly congenial as in the case of the Tilghman eulogy eight years before, for although in Marshall's case Mr. Binney had not the inspiration of personal acquaintance and friendship to at all the same degree as in that of Tilghman, its place was fully taken by his devotion to Marshall as the man who, more than any other, had claimed and won for the Supreme Court its lawful position as the final arbiter in the interpretation of the Constitution and the statutes, and a strong bulwark against the disintegrating tendencies of the State rights doctrine, as well as the usurpations of unconstitutional authority by Congress itself. Moreover, as Marshall's work was done in a broader and more exalted field

than Tilghman's, the new subject demanded of the writer a correspondingly broader knowledge, both legal and historical, and a more perfect grasp of the principles of law as connected with government. Fortunately Mr. Binney was able to meet these requirements, and it cannot be doubted that his recent life in Washington had taught him to appreciate Marshall's achievements even better than before, as he obtained a closer view of the workings of the government, and realized more completely the recklessness of party spirit and the necessity of some effectual restraint upon both the Executive and the Legislature. His tribute to the great Chief Justice of the United States was certainly not less adequate than was that to him who had filled with honour the lower station of the head of a State court.

The eulogy on Marshall is more than an appreciative and illuminating sketch of the life and character of a single man. It is a eulogy of the Constitution as a practical and powerful guarantee of the liberty of the citizen and the stability of the nation. It is an exposition of the Federalist ideal, the grandest and noblest ideal of government which, to Mr. Binney's mind, the world had ever seen. But recently an eye-witness of bitter party strife, and of the clashing of the interests, real or supposed, of the different sections of the country, he seized the occasion to point to the Union, established by the Constitution, as the only ark of safety; and as it were with prophetic voice to foretell the inevitable result of any attempt at national dissolution.

While we think with just affection, my fellow-citizens, of that State at whose bosom we have been nurtured, whose soil contains the bones of our fathers, and is to receive our own, and reverence her for those institutions and laws by which life is ennobled, and its enjoyments enlarged, far from us be that purblind vision which can see nothing of our country beyond the narrow circle in which we stand.

The Union is our country. The government of the Union is our own. It breathes our breath. Our blood flows in its veins. It is animated with the spirit and it speaks the voice of the whole people. We have made it a depository of a part of that liberty with which the valour of the Revolution made us free; and we can never review the works of this illustrious tribunal, since Chief Justice Marshall has been at its head, without gratitude to Heaven that it is the guardian of that part which alone could enable us in our separate communities to destroy the value of the rest.

What were the States before the Union? The hope of their enemies, the fear of their friends, and arrested only by the Constitution from becoming the shame of the world. To what will they return when the Union shall be dissolved? To no better than that from which the Constitution saved them, and probably to much worse. They will return to it with vastly augmented power and lust of domination in some States, and irremediable disparity in others, leading to aggression, to war, and to conquest. They will return to it, not as strangers who have never been allied, but as brethren alienated, embittered, inflamed, and irreconcilably hostile. In brief time their hands may be red with each other's blood, and horror and shame together may then bury liberty in the same grave with the Constitution. The dissolution of the Union will not remedy a single evil, and may cause ten thousand. It is the highest imprudence to threaten it; it is madness to intend it. If the Union we have cannot endure, the dream of the Revolution is over, and we must wake to the certainty that a truly free government is too good for mankind.

While Mr. Binney was undoubtedly filled with enthusiasm for Marshall and his work, he was not the man to speak over the heads of his audience. It may therefore be assumed that that audience was not merely in accord, in the main, with his principles, but was composed of men who could appreciate the beauty of his discourse, and in whose hearts his lofty sentiments would strike a responsive chord. It is a most significant commentary upon the difference between

that day and the present that the nucleus of that audience, those whom the speaker was primarily addressing, were the Select and Common Councils of the city of Philadelphia.

The following winter Mr. Binney reargued a case which has since become a part of the hand-book law of the Pennsylvania student,—*Ingersoll vs. Sergeant*,<sup>17</sup> argued originally, by the same counsel on both sides, six years before. On replevin for arrears of ground-rent, it was contended that a release of a part of the ground from the payment of the rent extinguished the rent altogether, although the deed undertook to reserve all the releasor's rights as regards the rest of the ground; but the court sustained the view (taken by Mr. Binney and Mr. Chauncey) that a ground-rent in Pennsylvania was not an English rent-charge, but was apportionable, so that the release extinguished only so much of the rent as was proportionate to the value of the land released. In delivering the opinion of the court, Kennedy, J., took the position that a ground-rent was a rent-service as at common law, and that the statute of *quia emptores* had never been in force in Pennsylvania at all. This doctrine has been the subject of much criticism, and it is significant that Mr. Binney seems to have confined himself to the view that a ground-rent was "in character *analogous* to a rent-service, . . . and ought to be governed by the rules applicable to that species of rent."

In April, 1836, Mr. Binney resigned from the Board of Trustees of the University of Pennsylvania, after having long been one of the most active members of that body. Taking a keen interest in the institution, he had wished to see it a great centre of higher education for Pennsylvania and the adjacent States, as Harvard was in Eastern New

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<sup>17</sup> 1 Whart., 337.

England and Yale in the more western portion. The broad training which such an institution would give was, he considered, the fundamental reason for the University's existence, and he always opposed the policy of devoting its resources to building up the Medical School at the expense of the college proper, the Department of Arts. If the men of Philadelphia, he thought, were furnished with a thorough college education, they would see the advantage of professional schools, and would support them; but a university strong in medicine and weak in arts was, to his mind, an inverted pyramid. Had he succeeded, in 1833, in inducing his friend John Pickering to accept the provostship, a change might have resulted; but finally he found the influence of the medical faculty too strong to be overcome, and resigned, Messrs. Sergeant and Chauncey also leaving the board at about the same time.

## VII

## EUROPEAN TOUR

1836-1837

**I**N May, 1836, the health of Mr. Binney's daughter Esther necessitating a sea voyage and change of climate, he took her to Europe, along with his niece, Miss Wallace. They returned in June, 1837, and soon afterwards he wrote out, from notes taken at the time, supplemented by letters, a very complete record of the tour, and of the impressions which the various places and people had made upon him.<sup>1</sup> The object of the journey confined him to the beaten track, but the whole system of European travel has been so revolutionized since that time, many of the places visited have been so much altered, and even the condition and habits of the people have, in some countries, undergone such changes, that to those who are only familiar with the Europe of to-day the record of such a journey reads almost as if it had been taken in another part of the world. With the sailing-vessels of that day, crossing the Atlantic was a serious matter, consuming far more time than now, to say nothing of the greater risk. Though meeting with no accident, nor any really severe weather, Mr. Binney was sixty-eight days on the water going and returning, as much time as many people now allow for an entire European trip. Under these circumstances it is not surprising that, having previously travelled but little, he had none of the spirit of the "globe trotter" of to-day, and would

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<sup>1</sup> The journal would probably fill two octavo volumes. Only some of the most characteristic portions are inserted in the present memoir.



probably never have visited Europe at all from any mere love of travel or desire for his own recreation. Italy had, indeed, been the subject of his "dreams night and day from boyhood," but it was rather the Italy of Horace and Virgil, of Cicero and Livy, the Italy of Dante<sup>2</sup> and the mediæval republics, than that of Gregory XVI. and the Bourbon kings and Austrian archdukes. He was too old for extravagant rapture over the sights, scenery, or life of Europe, and he had no tendency towards the so-called cosmopolitanism which often leads travellers to depreciate their own country; but his active and well-stored mind enabled him to enter fully and appreciatively into all the pleasures of travel, and to retain and record clear impressions of what he heard and saw.

Leaving New York on May 3, in the ship "Westminster," six hundred and fifty tons, the party landed at Falmouth on the 31st, when their first impression was of the severe aspect of the Cornish coast, even in fine weather.

"As it was from this port (Falmouth) that the 'Mayflower' with the Plymouth colonists departed for America, I could not help remarking that our Puritan ancestors could have met nothing more forbidding on the coast of New England than they left behind them. With their recollection of the hard doings of many of their countrymen, and the hard cliffs of their country which met their last looks, strong must have been their love of country still to regard them both with affection. But the mother's bosom, hard as it may be to others, is always soft to her children.<sup>3</sup>

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<sup>2</sup> "Let me say that I love that hard-headed, and deep-hearted, and large-livered man Dante as well as you or any man can; not that I understand him as well. I read all that I could get of him in Italy, on the spot and spots, and with benefit of scenery and footlights." (Letter to Dr. Lieber, December 14, 1861.)

<sup>3</sup> That the love of the early New Englanders for the mother country had descended to Mr. Binney in as full a measure as was possible for one who was devotedly attached to America, the pages of his journal bear witness, those por-

“ We landed after breakfast and stood fast for the first time on England’s fast island. We were all, of course, in buoyant spirits, not only disposed to enjoy everything, but incapable of any other sensation, and after the Custom-House was passed, where we found despatch and civil treatment, I reconnoitred the town, especially the suburbs, the best quarter to learn the condition and character of the people. In the direction which I first took, towards the castle of Pendennis, the cottages were in that taste which I afterwards found so common in England. Little enclosed spots were before most of them, with geraniums, roses, the arum, and other flowers in bloom in the open ground (not in pots), and honeysuckle and other trailing shrubs trained up the walls and by the sides of the doors. Flowers were to be seen on all sides, and the laburnum with its clusters of yellow blossoms. Every sense was regaled. Where there was hardly the evidence of comfortable subsistence, there were still cleanliness and the love of flowers. . . .

“ On the following morning, at half-past six, my party left Falmouth in a post-chaise and four for Exeter, one hundred miles distant, under bright skies and with a balmy air, and were destined to enjoy, on this first day, the full delight of English travelling. All nature was in her best attire, and a more beautiful nature than was before us a great part of the day I never beheld. Our vehicle was perfect for

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tions which relate to England being manifestly written with a more sympathetic pen than the description of the Continental tour. Perhaps his remark on the scenery of France, England, and America may in some measure be taken as a general expression of his attitude towards his own and foreign countries:

“ I am compelled to say that ‘ *La belle France* ’ is an expression that implies the admiration of the children rather than the beauty of the mother. I did not think her half as handsome as *my* mother, and she was no touch at all to my *grandmother*, who, by means of a fine taste in dress, looks something handsomer than her daughter.”

the purpose. The front and one-half of the body on each side had glasses, to give us the full sweep of the horizon, and there was no seat in front to intercept the view. The post-boys with their scarlet, or blue, or buff jackets, white or yellow breeches, and their fair top-boots, danced with an animated hitch in the saddle to the stroke of the horses' feet, over roads on which there was not a stone as big as a filbert, and with a pace never less than ten miles an hour. We were of course ushered at once into the beatitude of posting. When we arrived at Exeter in the afternoon, we agreed that it had been a day of too much sensation for profitable observation. . . .

"I shall never again feel the sensations which attended my first entrance into Exeter Cathedral. The exterior of it, with its many buttresses surmounted with pinnacles, and the lofty spires from its tower, had in some degree prepared me for them. In magnitude and in awful solemnity it greatly exceeded any ecclesiastical structure I had ever seen. Its dark-gray walls, covered in some parts with effigies in bold relief, which had been mutilated by violence, or worn off by the elements, so as to present no distinguishable features, spoke not only of ages long past, but of races of men who had successively lived and died, flourished and decayed, been ennobled and forgotten, had ruled and were trodden under foot, while the temple itself stood firm on its foundations, pointing with its pinnacles to the ever living and unchangeable Being above, in whose honour it was erected and still employed. Here was the noblest image I had yet beheld of change and constancy, of death and immortality, of the vapoury life of man and of the imperishable love and fear of God. With the emotions which the first view excited, I entered the church at its western end, and as I looked onward and upward and around, and took in the whole scene, I for

the first time felt disturbed by the presence of my companions, and wished to be alone.

“The painted windows threw a ‘dim religious light’ upon the bishop’s throne, and upon the pulpit, the stalls, and the altar, all of which brought before me the service of the Church, and made me feel that I was a fellow-worshipper in all points with those who worshipped there. It was a delightful feeling of communion with a people of whom as yet I knew none. . . . I continued to feel as a stranger and an alien in Italy to the last day of the seven months I passed there. I felt at home the very first hour that I entered an English church, and not truly till then. It was not so much the structure which produced this effect, as the worship celebrated in it, all the principles and ceremonies of which I knew and approved; but the structure, so worthy of the worship offered up in it, contributed to exalt the feeling to the very highest degree.”

From Exeter they went to London by the mail-coach, which presented many interesting novelties to the American eye.

“An English mail-coach is a ‘bit of Heaven dropt down upon earth,’ as much as the Bay of Naples, and rather more. Everything in it and about it moves at once,—horses, coach, and passengers. There was not a jerk or twist that would have spilt the wine from a glass in the one hundred and seventy miles from Exeter to Hyde Park Corner. Always in brisk motion, sometimes at full speed, you hear nothing but the sound of a closely geared engine, something like one of the deep pipes of an organ, with the least possible of the tremulant in it. It is, moreover, the gayest thing imaginable to the eye. The coachman and guard (I speak of the Royal Mail) in their scarlet coats and gold buttons, the coach generally, perhaps always, red, with the royal arms, the horses

blooded and perfectly groomed and matched in their paces, and the harness flashing from its metal tips and mounting, make it in seeming a holiday equipage, while in truth it is every day and all days in the year the same, to be found in the same spot at the same hour every day, and going at the same rate. A whip lash, cutting through the air like a scimitar, was the only word I heard from the coachman to his horses, and that very rarely, and it was always the precursor of a deeper tone from the wheels."

The stay in England in this summer of 1836, and after the return from the continent the following spring, covered in all about three months, including seven weeks in London; and, fortunately, Mr. Binney's journal records some of the impressions produced by the sights of that city, as well as his meeting with men whose lives have now become a part of the history of the empire.

"The monuments [in Westminster Abbey] in general, though they recall the names of some immortal men, are so irregularly thrown about as to mar the effect of this temple. From this cause perhaps, and from the tendency of the mind to dwell upon the deeds and characters of *men*, especially upon the pageantry of kings, queens, and coronations, to which the Abbey is devoted, I confess to the smallest degree of solemnity in it that cathedral church ever impressed me with. The full effect of cathedral architecture depends upon its devotion, and its exclusive devotion, to the worship of God. If the flaunting or gaudy banners of Knights of the Bath are hung up in it, if flags won in bloody victory are displayed there, if gorgeous monuments of statesmen, warriors, and poets proclaim there the praise of the sculptor, or the emptier praise of men who for the most part did works which God will disown,—I have found, wherever these things have struck me, that the emotion first excited in the Cathedral of

Exeter did not enter my heart. Westminster Abbey and St. Paul's were not therefore with me the temples of the living God, but were the works of man in commemoration of man. They are both, especially the latter, immense structures, and volumes have been written about them and what they contain, but I feel the same emotion in reading of them as I did in seeing them. How different from twenty other churches I could name! Henry VII.'s chapel, where the banners of the Knights of the Bath are suspended,—gorgeous and admirable no doubt,—would have looked as well to me in a picture. Can I say this of Exeter, Worcester, Gloucester, York, Canterbury?"

The chief impression produced by a visit to the Tower was the triumph of law over force.

"When the eye was not busy looking, the heart was thrilling with thoughts springing up from everything around,—of imprisonment, of misery and death, of murders according to law, and without law, and against law, that seemed to be written on every stone within these 'towers of Julius, London's lasting shame.' I was not sorry to get away, nor yet sorry to have been within and to reflect that, at this time of day, the lawless imprisonment of a British subject within those towers for a single day, and still more the lawless murder of any one, however obscure, by the arm of power, might shake them from their turrets to their foundations, that not one stone would be left on another. So much have the men around it changed, while the Tower is still unchanged. Lovelace's poetical philosophy—'Stone walls do not a prison make, nor iron bars a cage'—has received its verification at this day as also a political truth. No man is a prisoner in England unless the law is his gaoler."

When Mr. Binney visited England, but twenty-one years had passed since Waterloo, and the interest in the anniver-

sary celebration was heightened by the participation of many of those who had taken part in the battle itself.

“Saturday, June 18. The anniversary of the Battle of Waterloo, and a military exhibition in Hyde Park. It was a glorious day, and the first, almost the only one, that reminded me of the fine summer weather of my own country. . . . A fresh breeze dried up most of the watery clouds and drove the rest rapidly through the skies, giving that succession of light and shadow so favourable to the picturesque. There were about five thousand men under arms in the park, and they had been in preparation and training for the fête for several weeks. The spectacle was for its scale magnificent, and its scale was quite large enough for such an eye as mine. A card was sent to me to admit my carriage within the ring; but we were much better placed than in a carriage,—namely, in the upper story of a lofty house, immediately opposite to the royal carriages, and of course within a short distance of all the distinguished persons who surrounded the King. The Duke (there would seem to be but one duke in England) and the Marquis of Anglesea were most observed by us. The marching, firing of the small-arms, charging of the cavalry, indeed all the evolutions, seemed perfect. Two thousand legs seemed to be governed by one will. The feet in all parts of the park rose and came down as one foot. What gave special animation to the scene, however, was the finish of performance in the Horse Artillery. It was served with so much rapidity, and moved in all parts with so much precision, that had horses, guns, and men been manœuvred by machinery, it could not have been moved with more certainty, and it was as quick as an electric battery. A sham fight, which was enacted in the park, gave scope for all movements that it was thought proper to make. The vivid green of the park, the bright scarlet of the Guards, the flashing of their arms, the dazzling

white of their drillings, the charge of their light cavalry, the roar and smoke of the artillery, the animating breeze, and the bright sun, just tempered by the quick-passing clouds, as he fell upon the gorgeous scene of actors and spectators below, made it the most beautiful pageant I had ever beheld. It increased our satisfaction to think that it was a commemoration of by-gone sacrifices, and not a preparation for new."

As may well be supposed, Mr. Binney visited the courts and Parliament with peculiar interest. The latter was then sitting in temporary quarters, after the fire in St. Stephen's Chapel, and the arrangement of the apartments he heartily approved.

"They are of ample size for business, and for all the necessary accommodations for visitors. The desks and arm-chairs of our Congress are an abomination. Covered with newspapers and letters to be answered, and the desk drawers stuffed with paper, quills, biscuit, and tobacco, and arm-chairs behind them with stuffed bottoms,—who can expect despatch of business, or attention to what is going on, in a body so accommodated? A book or a newspaper or the writing of a letter is an easier refuge from a long speech than to cough it down. If members *must* listen, they will not endure a bore very patiently; and while they sit close together on hard benches without backs, they require to be interested by the speaker, as their own position is by no means interesting. As to the public, if the stenographers are there, and room for a dozen besides, it is abundant room. I am therefore for confining representative bodies within the smallest compass not producing positive bodily discomfort, and this I understand is the design of the new Parliament House. I am for compelling the members to cough, scrape, or groan down the whole army of bores who speak for Buncombe, and



they never will do this if they have books or letters to read or arm-chairs to sleep in.

“In the afternoon I went to the House of Commons, being admitted by the Speaker, and having a seat on the tier of benches, which, on each side of the door of entrance, rise from the level of the lowest bench to a height of perhaps eight or ten feet. I heard Lord John Russell,<sup>4</sup> Sir Robert Peel, Sir James Graham, Warburton, Wood, O’Connell, Shiel, Lord Stanley, Talfourd, Sir John Campbell,<sup>5</sup> or most of them, but the topics were of no moment, nor the debates of any interest. The members transacted business in committee with great effect and despatch. There was a good conversational style of remark, a few minutes by each speaker, pertinent to the matter in hand, and without any pretension: good manners, good sense, order, pertinence, facility, and promptness. I made an involuntary contrast between this and what I had always witnessed in Committee of the Whole at Washington. I do not mean to criticize the speakers, but I heard no debating at any time in either House that was better than I had often heard at home; in general it was not as good. I must, however, express a decided preference for the manner in which business was disposed of in the House of Commons.”

Of other visits he wrote:

“April 19, 1837. I went down to the House this evening after dinner to hear a debate upon a motion by Sir Henry Hardinge in regard to the employment of British forces in Spain. When I entered the lobby, by permission of the Speaker, Lord Palmerston<sup>6</sup> was on his legs, and I listened to him for two hours, and left him as I found him, during which time I think he had used his legs more than his understand-

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<sup>4</sup> Home Secretary.

<sup>5</sup> Attorney-General.

<sup>6</sup> Foreign Secretary.

ing. He is an awkward, unfluent speaker, wanting small words especially, and never using select ones. On at least fifty occasions his sentences were finished in a way that he probably did not intend. I never knew a man who had so little of the Virginia faculty of closing a period smoothly and roundly without regard to its meaning. There was good sense in much that Lord Palmerston said, but it was very plain, every-day sense, delivered in a very plain, every-day dress, by no means so good as he covers his body withal. I understood at the same time that this was one of his best efforts. He was at times vehemently cheered by his friends, sometimes by the opposite side by way of taunt, and then there was a regular set-to, each side endeavouring to out-go the other. It was like nothing I could conceive of but a grove of monkies in Africa at a town meeting. The 'Hear, hear, hear' was sometimes like the neighing of a horse, sometimes like the gibber of an ape. Everything like dignity was put to flight by it, and I suppose that it is never used in this uproarious form as an accompaniment to a speech of any dignity, which Lord Palmerston's was not."

"April 28, 1837. In the evening I went with our minister to the House of Lords. Some Irish remonstrance was up, in regard to Lord Normanby's administration, the pardon of culprits among the disaffected, I believe. Lords Roden, Clanricarde, Donoughmore, Glengall, Lansdowne,<sup>7</sup> and Wellington were the speakers. The Marquis of Lansdowne spoke quite well, and evidently got the advantage of Roden, who had made his attack without a due preparation of facts; and I was delighted at the manner in which the Duke, finding his friends could not meet the enemy in front, gave the ministry a smart charge in flank, and got a little advantage there

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<sup>7</sup> Lord President of the Council.

to set off against the loss in the main action. No final question was taken, but all was conducted with great dignity. Lords Brougham, Holland, Cottenham,<sup>8</sup> Abinger, Melbourne,<sup>9</sup> Glenelg<sup>10</sup> were there, in a full house; but not a word did I hear from any of them but a 'Hear, hear' from Lord Holland, in a voice of such breadth, depth, and spirit as went to my heart."

Of his visits to the courts, Mr. Binney wrote:

"June 16, 1836. The judges were at work, but not in banc. Coleridge was sitting for the King's Bench, Parke for the Common Pleas, Lord Abinger (Scarlett) for the Exchequer. Witnesses were under examination, and the judge took brief notes, but not the counsel, and the pause between the answer and another question was the shortest possible. The wigs are a capital supplement to a tell-tale face, the worst thing with a bad cause that a barrister can have. They bring all the faces to one expression, and that the blankest possible. Sir John Campbell, the Attorney-General, and Sergeant Talfourd (the author of *Ion*) looked both alike. I afterwards saw them in the House, and, in the absence of their gowns and wigs, pacing Westminster Hall; they were *méconnaissables*. Two men more unlike, out of their wigs, never lived. . . .

"April 18, 1837. Visited the Court of King's Bench. Denman, Littledale, Patteson, and Coleridge were all in court. The countenance of the chief justice is manly and good. It is a face to bespeak confidence in integrity, rather than in acuteness or learning. Judge Littledale is obviously an old man who has outlived his vigour; but I took pleasure

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<sup>8</sup> Lord Chancellor.

<sup>9</sup> First Lord of the Treasury, and Prime Minister.

<sup>10</sup> Colonial Secretary.

in tracing out his resemblance, which I instantly perceived, to my old master Mr. Ingersoll. Patteson has a fine eye, indicative of genius, not of patient and long-enduring labour. Coleridge's physiognomy could not be improved. There was thought and refinement in all its lines. The wigs and curls and bluish-purple gowns with changeable reddish cuffs were an important part of the scene. It was motion day, and the counsel were called upon in order. The oldest soon got stumped, and was talked down. His motion for a new trial did not last three minutes, and the court saved all trouble to his opponent. The reporters were sitting under the court, taking their notes, and the students-at-law were employed on each side of the reporters in the same way. There was great order and sufficient despatch, but there was little ceremoniousness between court and bar, and not the least air of either condescension or deference. Upon the whole the judges and bar were more nearly on a level than they are in the Supreme Court of the United States, not to say that there was any improper familiarity either way.

"In the Exchequer, which I also visited, Lord Abinger was sitting as chief baron, with Sir James Parke and Bolland. Lord Abinger's face was not as fiery as it struck me to be last summer. When I saw him I knew him to be Scarlett at first sight, varying to crimson. Sir James Parke has a dark, Websterian face, and passes for having the same kind of head. Bolland's face is long and not intellectual.

"The Vice-Chancellor Shadwell, who was holding his court, caught my attention more by a remark he made to counsel than by his face or person. Some one, I did not know who, was endeavouring to repel a charge of harshness made against his client by the opposite counsel, as if he feared its influence on the vice-chancellor's mind. The vice-chancellor, in a clear but rather sharp and thin voice, said, 'It is not the

question, and I care nothing about it. Go to something else.'

"Tindal and three others were in the Common Pleas. One judge was absent from both this and the King's Bench, probably at sittings or nisi prius. . . .

"April 28, 1837. The American Minister did me the honour to drive me down to Westminster Hall, to introduce me to the judges, at a little after nine. We had delayed so much that they were just going into court when we entered their chamber, and after an introduction and a few words Lord Denman led the way and asked us to follow the judges into the court-room, where he ordered us a seat near the reporters. The Attorney-General (Campbell) asked us down to his form, which was in front, nearest the court, and there we sat for an hour. Whiteman and Archbold were arguing, and Cresswell, who was sitting among the barristers, said something civil of the American courts, with which he said they were well acquainted by their reporters in the library of the bar. It was motion day, as when I was last there."

Of the lawyers' church Mr. Binney wrote:

"Sunday, April 23, 1837. It was with great pleasure that I took my girls to the Temple Church this morning, to hear the fine organ, to see the noble old structure, and to hear a sermon from Mr. Benson, the present master, whom I have more than once heard spoken of as one of the best preachers in England. The church is a structure parts of which looked older than other parts, though none was new. In a sort of vestibule the monuments of the Knights Templar give you antiquity of more than five hundred years, as the order has been so long abolished. The bronze figure of the knight lies flat in some instances on the top of his grave, without other monument. Such as had been to Palestine as

Crusaders lie with one leg crossed over the other. The sermon was well written and well delivered, that is to say, with unction. The Master seemed to be in feeble health. The greater part of the congregation consisted of men, who I suppose were the benchers, and the same description of men for whom Sherlock wrote his admirable sermons when he was master, the very best sermons for lawyers that I think were ever written. . . . It was the highest gratification to be in the church, and in the centre of the audience that I had so often figured to myself while reading these sermons."

Mr. Binney had taken a hundred and thirty letters of introduction with him, chiefly to Englishmen, but as he did not present a third of them, probably the greater number had been volunteered by his friends. His unwillingness to leave his daughter and niece to themselves restricted his own movements somewhat, and he was, moreover, never keen about making acquaintances, and the last man in the world to run after celebrities. He was also somewhat influenced by the fact that the general feeling of Englishmen towards Americans was then far from cordial, for he wrote:

"I regretted exceedingly that I had to break away from Edinburgh without seeing any of its great men, to several of whom, Jeffrey, Hope, and others, I had letters; but during all my tour I felt exceedingly shy of presenting my letters to English and Scotch gentlemen, who are themselves very shy of my countrymen, placing all of us in a category which I might not have had time enough, in a single interview, to shew I did not belong to. . . . I had taken Lockhart's Life of Sir Walter with me, as far as it had appeared, and his letters are not of a kind to induce an American gentleman to build much on casual invitations, . . . or even invitations of more emphasis. There is very little kindly feeling

towards my countrymen among the nobility or those who associate with them, and if, perchance, Sir Walter names an American in kind terms, as he does two or three, you are given to understand that he regards them as exceptions. This is not exactly the temper which a man of any delicacy is inclined to trespass upon."

He did, however, see a certain amount of London society, of which the journal gives a few glimpses.

"At Sir William Alexander's I met Mr. Kindersley, one of the foremost men at the Chancery bar, a man of fine breeding, with a most attractive countenance and an easy stream of conversation, which I could strike into and come out of at any time without raising a spray like the sea against the Eddystone, as must happen when you encounter an uproarious and engrossing talker. The latter happened to me but once in London: the general manner was that of Mr. Kindersley. I saw at the same house a letter from Sir William Grant to Chief Baron Alexander, shewing that he had been offered the seals and had declined them, a fact not generally known. At Lord Ashburton's I met Mr. Pemberton, another of the Chancery bar, perhaps at its head, equally quiet and well-bred, but not so attractive as Mr. Kindersley. D'Israeli, the author, was there, a great dandy; Lord Lowther, a man apparently of strong mind; and a Mr. Banks ('Conversation Banks,' he was called), who quite overlaid D'Israeli with a never-ending, still beginning succession of histories, bon-mots, the life and adventures of Lady Cook, etc., which prevents my remembering a single word that either of them said, except that when Banks was about to speak of a very old lady, D'Israeli had the good luck to deliver himself thus: 'Oh, yes, I recollect,—

She lived to the age of eighty-three

And died by a fall from a cherry-tree.'

“Banks, indeed, overlaid us all, but he smothered D’Israeli for spite, the rest of us only because he would have split himself if he had not talked. This was the case of violent talk to which I alluded. It was very amusing, sometimes very droll; but in the presence of strangers, for whom the dinner was made, it was very impudent. At Lord Lansdowne’s I met Lord Glenelg, the Secretary for the Colonies, a very dull man, I think, and Sir John Franklin, the traveller, communicative and agreeable.

“[On June 26, 1836] I dined by invitation with his Grace the Duke of Wellington, to meet the Prince of Orange. It was a large dinner party, of perhaps thirty, and I suppose Sunday was selected as it was the anniversary of the accession of the King to the throne. The hour of dinner was seven in the cards of invitation, and I was in the picture gallery of Apsley House, where the Duke received his guests, a few minutes after that hour; but the only person before me was Lord Rosslyn, an intimate personal friend of the Duke. The rest came in at from a quarter to three-quarters after seven, and the company did not enter the dining-room until after eight. Punctuality therefore, though one of the Duke’s characteristics, was not the rule among all his guests.

“The Prince of Orange, Lord Rosslyn, Lord Aberdeen, the Duke and Duchess of Buccleugh, the Earl and Countess of Wilton, Lord Burghersh (son of the Earl of Westmoreland, and married to a niece of the Duke), Lord Fitzroy Somerset, Lord Hill, Prince and Princess Galitzin, M. and Mme. Dedel (minister of the Netherlands), Sir Charles Bagot, were among the guests. The Duke presented me to most of the gentlemen, in which name I can give no just cause of offence by comprehending princes, noblemen, and commoners. It is the highest title of any of them. The Marquis



of Down, the Duke's oldest son, was present, quite a young man, and not likely to make the world forget his father, and one or two young men of the same age, one of whom sat next me at dinner and amused me by his flippancy,—telling me that the Princess Galitzin's right cheek was rouged so highly because the left had been accidentally burnt to that colour; that Lord Hill, who was on his left, was then asking the lady who sat on *his* left, who he was (the young flip) who sat on his right, and he should like to hear her account, as she was his wife; and so on around the table as long as I would listen to him. The person on my right was Lord Rosslyn, under whose care the Duke placed me, and by him I was instructed in all the particulars of the company that a stranger might not be presumed to know, but with perfect breeding. . . .

“ The dining-room was hung round with portraits at full length of the Emperor Alexander, the King of Prussia, the King of the Netherlands, Louis XVIII., and Charles X., all by Sir Thomas Lawrence; and the table was a sort of history of some of the Duke's military achievements. A silver plateau of perhaps twenty feet long, richly wrought, was the gift of Portugal. The silver and gold service on which we dined was, I think, the gift of the city of London. The china on which the dessert was served was the gift of the King of Prussia, each plate representing some battle or public event. The furniture of the table, and it was very splendid, by its forms or the devices upon it, reminded one of the Duke's military services, and this it may be thought was an objection to the display of it in the Duke's house; but it should be recollected that this was in some sort a public dinner to a foreign prince, and that the plate, china, and table-service were not a contribution by the Duke to his own glorification, but the gift of grateful princes and people. Indeed, the

Duke's personal or private character is so entirely absorbed in his public condition and relations that the reserve and modesty of a private man would be regarded as affectation.

“In his address and demeanour to myself he was as unassuming and well-bred a person as I ever met. He looked thin and rather careworn, or perhaps I mistook for this what were merely the traces of declining health. His stature is of the medium height, and the features of his face prominent, giving the expression of firmness and strength, rather than of refinement. I was particularly struck by his eyes, to which most persons resort in the first instance for an introduction of character, and which surprised me by a total absence of brilliancy, and, indeed, of almost all distinct expression. Their colour seemed to be like lead, a dull blue. I looked again and again to see if there would come over them any change, but never found any. They were neither forbidding nor inviting. They were rather cold, far from being unintelligent, and as far from being penetrating. They were by no means common eyes, and yet none of the uncommon qualities which the eyes sometimes shew were indicated by them. From often looking, however, the impression was at length made upon me that what is more frequently shewn by the bones of the head and face, and what both the head and features of the Duke expressed quite strongly, was shewn most strongly by these dullish-blue eyes,—*an imperturbable soul*. There were no sharp or quick glances from them, nothing in them which created uneasiness in the observer, or made him unwilling to meet their regard with his own, but there was an equableness in their movement, the expression of a composed and self-dependent mind, which you would say neither good nor adverse fortune, however sudden or extreme, could disturb. I do not infer this from his character, for I do not know it to be his character, but from the eyes them-

selves, which I at first thought very common, and after much observation I came to think the most uncommon I had ever seen.

“ The Duke was dressed as a private gentleman, that is to say, in a black coat and knee breeches of the same colour, but he wore the garter at his knee and the riband over his shoulder, as did the Duke of Buccleugh. The Prince of Orange I think had none of his orders on. He had a hearty and frank manner, and a good deal the air of a *roué*. His mouth was of the largest and coarsest, and no very good teeth within. He spoke English with freedom enough, but with a strong accent, and such questions as he put to me, and the remarks he made, indicated nothing. He was a gallant officer at Waterloo, and was wounded on the present site of the Mont du Lion. Two of his younger sons were at this time in England, soliciting, it was said, the regards of the Princess Victoria. Another of them had been in this country, and had been fêted by the citizens of Albany. The Prince said that they had been kind to one of his ‘ poys,’ but seemed to take such civilities as a matter of course, and not to be the occasion of any particular thanksgiving. I was not struck by anything as much as by the heartiness of his manner, in which, however, there was no *bonhomie* whatever.

“ Lord Aberdeen, rather a shy and awkward man, I should say, said a good deal to me of General Jackson’s affair with France about the Indemnity Treaty, and praised him much for the spirit with which he managed it. I could only bow in token of my hearing him, and in a sort of response to the motive of his remarks. I happened to differ on the point from his lordship. He also praised Mr. Van Buren for both his general manners in society and his cleverness in diplomacy. To this I bowed with the like meaning. It was rather singular to hear these praises from the lips of the high-

est Tory in England, but perhaps there was a congeniality.<sup>11</sup> I had a letter to his lordship from Mr. McLane, our former minister, but I did not deliver it. I spoke myself with some praise of Mr. McLane, and Lord Aberdeen assented; but he seemed to contemplate with most favour the two personages first mentioned.

“ Lord Hill, with whom I also conversed, seemed to me one of the easiest and sleepest of men, unaffected and well-bred, but not quite awake. On the field of battle I suppose he was lively enough. It is said that the duke could always rely on all the orders he gave to Lord Hill.

“ The Duke of Buccleugh was a tall, thin stripling in person, with the air of a man of fashion. From the Duke of Wellington’s calling to him out of a group to introduce me, he inferred, I suppose, that he was to be civil to me, and accordingly invited me to a party that the duchess was to give the next day. He said he should not be there, but urged me to come, and said the duchess would be glad to see me. He also invited me to Dalkeith, where he would be in the autumn. The duchess was a short sort of dairy-woman in appearance, young like himself, and as hearty a laugher at table as I ever

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<sup>11</sup> A letter written by Mr. Binney the following winter shows that Lord Aberdeen was not alone in his opinion.

“ It is not a little edifying to hear the opinion entertained by foreigners of things at home. The highest praise I heard in England of Jackson and Van Buren was from the Tories of the strongest cast. Lord Aberdeen spoke in the strongest praise of both, and especially of Jackson’s affair with France, which had very much raised us. On the Continent Jackson’s name, with politicians of every cast, is in better odour than any President’s since Washington. He is praised as a fine writer, a man of indomitable will, a sworn enemy to corruption, and a true patriot. Van Buren will succeed to his praises, unless his ignorance of arms shall hurt him. I rather think, however, that, coming as he does by the fiat of his predecessor, he will succeed to his reputation in all points. The opposition must be content to pass with Europeans generally as the same sort of faction which exists in all countries and endeavours to disturb the regular course of government.”

met. They told me in Scotland that she did not laugh, but cried herself into the Duke's heart, who, on taking leave of her for Scotland the day after he had seen much of her at a dance, could not resist the evidence of her tears that he had made an impression upon her, and gave up his journey to attend to the more urgent business of drying them up.

"It was about half-after eight that a note was delivered to the Duke, and he read it to his guests. It was from M. Sebastiani, the French minister, announcing the attempt upon the life of the King by Alibeu the previous day, and its fortunate miscarriage. It had left Paris about one o'clock the same morning, telegraphed,<sup>12</sup> I suppose, to Boulogne. The Duke's pronounciation I observed to be quite English. . . .

"April 20, 1837. Dined at Sir William Alexander's with Sir John Nicholl, fresh, though much advanced, being upward of eighty. Sir John informed me that Mr. King, our minister to England, and himself first urged Dr. Robinson to report the Admiralty decisions of Sir William Scott. He made inquiries of me concerning Rufus King and two or three other Americans whom he had known in London, and who had been dead perhaps twenty years. In this respect he was like many other eminent men I saw, who took no sort of interest in the United States or their men or measures, unless some particular personal interest had awakened their attention. He asked about General Ira Allen also, who had been dead perhaps forty, and amused himself by telling me of the general's admiralty suit, in which Sir John was his counsel. He had been captured with arms, going somewhere upon a Yankee errand to make the most of a bargain, without much regard to the law of contraband. Sir James Marriott had determined to condemn, and Allen, who meant to shew

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<sup>12</sup> Semaphore telegraph.

he was not frightened, went into court in his Continental regimentals. Sir John told him he might make what fence he pleased, Sir James would leap over it all; and Allen said, 'Well, all I ask is that you will make it as high as you can.' He seemed to retain a vivid recollection and even relish of Allen's strongly marked character, and of his Yankee Dorie especially, of which Sir John gave me specimens. . . .

"It was at [a musical] soirée [in 1836] that I first saw Mr. Samuel Rogers, whom I afterwards had the pleasure to know. I saw a quiet-looking old gentleman, in a black frock coat and white cravat, with a perfectly white and nearly hairless head, sitting in a sort of dreamy mood on one of the benches, neither talking, nor looking, nor apparently listening, but, as far as he was engaged with anything, seeming to be occupied with something that was going on within himself. He was no doubt shutting out all the sights around him, and deadening his ears to every sound except that of the music, that he might the better take in its exquisite strains. [Malibran, Grisi, La Blache, Tamburini, Rubini, Thalberg, and Costa were the artists.] This was Mr. Samuel Rogers, the poetical, the conversational, the amiable, the truly well-bred, the refined, the elegant in mind and spirit. I never before liked any man so much upon a week's acquaintance, and that a very slight one even for a week. . . .

"May 1, 1837. A pleasant dinner at Dunlop's, with S. Rogers and Leslie. Rogers's account of the stuffed footmen on the Cardinal's coach, whom the horses of the Cardinal following ate up from desperate hunger before they arrived at the Vatican, was as good and as English as Hogarth's Calais Gate. Even such an Englishman as Rogers (one of the best) relishes a joke at the emptiness of foreign pretensions to style and grandeur. I heard him speak of the poet Coleridge as gone in intemperance, both of rum and tobacco.

. . . Yet he said he had written beautiful poetry, and was capable of writing better still. Leslie spoke of Rubens in very high terms, of Murillo in low. He said his Madonnas were peasants. . . .

"June 5, 1837. A very pleasant day, fully employed, beginning with a breakfast with Mr. Rogers, whose kind manners to my girls and the ease and friendliness of his talk were very engaging. I do not wonder that he is so universal a favourite. He opened his private study to us, shewed us the original contract with Milton for the *Paradise Lost*,—I think £5 was the price of the work,—and gave us a profusion of anecdotes in his quiet way, of all ways the best. Behind my chair at breakfast was a carved stand, the work of Chantry, which Mr. Rogers had purchased he knew not where nor why; but as Chantry was dining with him the first time, he described this stand, and told Mr. Rogers that it was his work while he was apprentice to a cabinet-maker. Cooper (our Cooper), he said, did not take in London. He was huffy and stood upon his own dignity: wouldn't go to the Duke of Devonshire's because the Duke had not first called upon him. . . .

"June 3, 1837. I passed a very delightful hour in the parlour of the Russian minister, Pozzo di Borgo, at his house in Dover Street. I should not record, even here, the remarks of a public man on public measures of his own country if they were such as he ought not to have expressed; but I suppose them to have contained nothing that he had not expressed before, and at all events that he might not safely have expressed to any one. He was not questioned by me to a single point. He did not question me. He probably knew from the gentleman who presented me to him that I should not repeat what he had said, and he talked freely and communicatively of what he thought would interest me most.

Two full-length portraits in the room, Alexander and Nicholas, did not fail to attract me during my visit, and I said a word of praise in regard to the original of the one who had run his race. He said they were two very different men. Alexander was amiable, he had *beaucoup d'aménité*. Nicholas was *un homme de tête*, by which I supposed him to mean that he had not much heart. This was the only remark he made concerning his present master. Alexander was, moreover, a prince whom he had found it *safe* as well as honourable to serve. He had differed from him in regard to a point of policy to such an extent that he was prepared for leaving the Emperor's service. The coolness was mutual and lasted for some time. Pozzo di Borgo could not surrender his opinion, nor would Alexander surrender his. At length the Emperor said to him one day, 'The subject on which we differ you no longer mention.' 'I cannot hope to change your Majesty's opinion.' 'And you do not mean to change your own; *mais les gens honorables s'expliquent.*' And then the Emperor entered upon a conversation in which he did full justice to his minister, and finally declared himself satisfied with the minister's views, and dismissed him from the interview with great cordiality. The point of difference regarded Poland. But Pozzo di Borgo, though a friend to Poland, said that setting up that government would be a fatal example to Russia, and could not be thought of. The chain, he had thought, might have been lightened.

"He was no friend, he said, to unchangeable constitutions, like ours, for changeable people. The excellence of the English Constitution was that as the people changed, the constitution was changed with it by the legislative power. The rigour of our written Constitution prevented this, and exposed us to spasms.

"The great point in the administration of modern na-



tions was not the balance of power, but the balance of parties. The desideratum was so to balance parties that the responsible party should have strength enough to carry out its own measures, without having enough to be above responsibility for great faults.

“He was in Paris during the *trois jours*, and had conversations with Louis Philippe on the subject. Whether it was the opinion of Louis Philippe or of himself I do not recollect,—probably they concurred,—that the only way of restraining or bridling the democratic principle was by institutions, by which I understood the army, the navy, the public establishments of every kind, judicial, administrative, etc. His opinion, as well as that of every one with whom I spoke, was that the King was fully adequate to his position.

“The point on which he was most explicit was on the perfect and irresistible power of Russia over the fate of Turkey. It was in the interest of Russia to sustain Turkey, and not to destroy her. The latter was as easily done as willed, and England could not possibly prevent it. But she had no reason to apprehend it. Turkey was a frontier that was useful to Russia. He did all but say that the policy of Turkey was the policy of Russia.

“I do not mean to be understood as having adopted all the opinions the minister expressed, but his conversation was very agreeable, and, like his master Alexander, ‘full of amenity.’”

To a man of Mr. Binney’s observing and reflecting mind the social characteristics of the English people were very interesting, especially in their points of contrast with the American characteristics of that day. Some of his observations may therefore properly be recorded here.

“It was quite natural that those things in London should strike me most which are most in contrast with things in my

own country; and this contrast is not seen in houses, furniture, dress, equipage, or externals of any kind, so much as in certain habits and opinions.

“In the United States we have no rank nor titles, no privileged class, no class of any kind acknowledged by the Constitution. There is no inferiority by law, nor even subordination of any portion of the people to any other portion. The condition of all under the Constitution is equality. The tendency of the people in point of fact is to something more than equality, to a general striking or sinking of everything to a uniform surface. . . .

“If superiority of conventional rank is asserted by any one, it is positively offensive to all whom it effects to undervalue. The distinction of circles with their separate centres, a distinction which necessarily exists in our large cities, is the occasion of jealousy and ill-will to all who do not move in that which claims to be superior; and the jealousy and ill-will are . . . greater where there is some reason for the distinction than where there is none, which shews the inveteracy of the objection against distinction at all. . . .

“In England everything admonishes you of an established distinction in ranks, which seems to be regarded as the order of nature rather than an institution of man, and it sits naturally upon all. I, of course, do not include political reformers or radicals, some of whom are for pulling down everything, and may therefore, for aught I know, feel as spitefully towards rank and title as they do towards property and law. . . .

“In all grades which I had an opportunity of observing, there is not only an acknowledgment of superiority in certain classes, but habitual respect for them on that account. A nobleman is everywhere received as a person specially entitled to deference on account of his rank, without

regard to his personal merits. No person below the grade of nobility questions his title to precedence, or desires to question it, or is made uncomfortable by it. It was sad folly in one of our countrymen to think he was slighted by a nobleman who went before him into a drawing-room where they were visiting together. It would have shocked the prevailing sense of propriety had it been otherwise. It was not a question of politeness or civility, but a settled point in the constitutional law of society. It would have been deemed absurd [for the nobleman] to have entered last, and mere *gaucherie* in the American to have gone before him. The gentry receive in like manner the special consideration of the tradesmen, and the tradesmen of the mechanics, the classes above of the classes below. Society in England rises from a broad base by regular gradations to a point. No one seems to dislike the person above him for that cause, any more than the under stone dislikes the upper one in a pyramid. All are striving to get above their actual condition, because they esteem what is above it, and not to pull down or sneer down what is above to their own level. If there is ill-will or contention among them on the score of pretension, it is between persons of the same class, whose pretensions are not settled by prescription nor perhaps by anything like general assent.

“Rank among the nobility is as well settled in the main as if a statute of the realm had established its degrees. Indeed, it is a part of the common law; and the nobility do not seem to assert its claims with more vigilance than commoners are willing to concede them. I was introduced to the wife of a knight, I think, perhaps a baronet, as Lady D., and I was told immediately afterwards by my introducer, to exalt my conception of her, that she was a lady in her own right. She was a daughter of the Earl of Minto; she was of course more in reverence than a lady by marriage. . . . I was never

asked to precede a nobleman at any dinner to which I was invited, except once, and then I think by mere accident. Where commoners alone were present, I was treated as strangers are always treated among equals. This is not a matter of ceremony so much as it is of habitual feeling, a part of an Englishman's nature. I noticed it everywhere, and I may say it never annoyed me."

The journal contains many observations upon institutions and customs, some of them wholly unknown in America at that time, but which have since become thoroughly established here, with but little modification. The clubs, the police, the "two-penny post," the well-kept, macadamized streets, the attractive squares, the markets, the methods of advertising, all interested Mr. Binney, not merely as novelties, but as features of English life which American life, as it developed, was certain to resemble more or less. The advantage of a well-disciplined police, a civilian body, not a *gendarmerie*, impressed particularly his order-loving and law-revering mind.

"Our own cities *must* have this force in time, or there will be no living in them. A military police is out of the question. Our people will not, any more than the English, bear the appearance of arms. The secret of Sir Robert Peel's metropolitan force is in its citizens' dress, with just distinction enough to identify the individual and his office, constant movement on duty, quiet in the performance of it, and such discipline as to produce union and concert in the masses when they are brought to act against mobs."

## VIII

## EUROPEAN TOUR (CONTINUED)

1836-1837

ENTERING France at the beginning of July, 1836, Mr. Binney was for the first time brought face to face with the militarism which, then as now, dominated the Continent, and it made a strong impression on his mind. He wrote:

“There was one feature in Paris—I might say, in France—that was in most disadvantageous contrast with London and England. The day of Napoleon had passed, and a charter and a representative legislature had been substituted for the personal will of the Emperor, and also of the Bourbons; yet the metropolis and the country at large were obviously under military subjection. I do not mean that the government of the city or of the country was in the ordinary sense military, but everywhere military means seemed to constitute the principal reliance of the government for the execution of the laws. I have remarked that a military guard was always detailed for the theatres which I visited. I must add that there was not a day, nor perhaps an hour of any day, that large bodies of either the regular army or the National Guard were not marching by the doors of the hotel. They were regularly reviewed, several times a week, in the Place du Carrousel, immediately adjacent to the Palace of the Tuileries, and on Monday morning of each week the Place Vendôme was the scene of such cases of military degradation as had occurred in the past week, to be publicly administered. The large square was on these occa-

sions densely crowded with soldiers, and in the immediate presence of the column, and of the hero whose awkward cocked-hat crowns it, the soldier who had disgraced his profession was stripped of his uniform or received the other inflictions which his sentence required. Vast numbers of the Parisians attended this sometimes dramatic scene, and probably felt that the martial law was as much for them as for the soldiers. I do not know that I could at any time have looked a hundred yards ahead in Paris without seeing several, and often many, armed and uniformed men. Often in the country, when all within the reach of my eye was with one exception peaceful in the highest degree, the *gens d'armes* on horseback, armed to the teeth, seemed to shew that the general rule was not only proved by the exception, but depended upon it. . . . These ever-present soldiers did not impair the sense of my security, for I believed that their duty was to enforce just and equal laws, as far as the condition of things permitted such laws; but they made me feel unequal to my own defence, an uncomfortable and belittling sensation, which no one feels in this country, and which I confess I never felt in any part of England."

A letter to Judge White, written after he had seen more of the Continent, refers to the same condition everywhere except in Switzerland, and says, "What the people say of it, it did not become me to ask. What they thought of it, I did not fail to conjecture. In their place I think I should say it was an honest power, in saying plainly what it meant to have, and if there was room anywhere else in the world, I should try to get away from it."

Mr. Binney was naturally interested in French legal procedure, but found little to admire in it.

"I expressed to the Duke of Bassano, whom I met at the table of a friend, my desire to witness a jury trial in Paris,

and he obtained from the Advocate-General, M. Pluquem, the knowledge that a capital case was then on trial before the Cour d'Assises, in which Berryer was counsel for the defendant, and an invitation to me to attend. I accordingly went to the Palais de Justice and had a seat given me on the same platform with the judges, a customary civility to strangers.

"The defendant's name was Dehors, and he was accused, indicted, we should say, of arson. He was a proprietor, or farmer, and the burning of his neighbour's barn was attributed to malice, personal or political. Something in the case, its gravity as a crime perhaps, more probably something in the public excitement, had enlisted Berryer, who, in the Duke of Bassano's note to me, was styled '*premier orateur de France*.' He was the only counsel retained for the defendant.

"The president of the court, with two assistants, one on each side of him, and the Advocate-General, occupied the bench. The prisoner was in a long box or enclosed seat in front of the bench, to the left, a little elevated above the seat occupied by his counsel. The witnesses were in front of what we should call the bar-table, and on the right, in a box corresponding to that of the prisoner, were the jury. The fine head of Berryer, and his keen, full eye, struck me as soon as I had taken my place, and I soon became acquainted with his commanding voice and person.

"I was, of course, most struck, and perhaps exclusively, with the points of difference between this jury trial and those I had been accustomed to. The president himself swore the witnesses, and alone examined them, or, rather, put the questions to them. The oath had no reference to a belief in God or in a future state. It was in these words: '*Vous jurez, sans haine et sans crainte, de dire la vérité, toute la vérité et rien que la vérité.*' The words '*sans haine et sans crainte*'

might as well have been omitted. They do not comprehend, or rather exclude, a more frequent cause of bias than either hatred or fear, namely favour or affection, or the hope of gain or reward. The omission of the common reference in English and American oaths may possibly be explained by the want of sufficient religion in the people generally to make it of any influence.

“The practice of putting the questions by the judge is the worst possible to obtain the truth from a witness, unless two cases are supposed,—that the witness is honest, and that the judge is unbiassed. Neither of them is so general as to make them the proper foundation of a general rule. In cases which affect the appointing power, as political cases nearly always do, it is a terrible weight in the scale of oppression to have the facts brought before the jury in the colours which a corrupt and adroit judge may always give to them by the language of his questions. Moreover, an impartial mind is not the best to ascertain the facts, though it is decidedly the best to weigh them. Two or more opposing counsel, professionally partial on each side, and pulling each his own way, most frequently strike the line of the facts. Though their contrary forces are respectively tending to a false conclusion, the impartial judge is generally able to see what is the true resolution of them. If a judge who examines the witnesses is partial, his bias will find its way into all the evidence; and if he is impartial, the danger is that he will not detect and counteract the bias of the witnesses. For the discovery of truth by the judge, both in fact and in law, the best instruments in the world to assist him are opposing examiners and counsel. The conflict will strike it out, as the spark is struck out by the flint and steel.

“The advantage of a cross-examination is, moreover, almost lost by [the French system] to the adverse party.



The mere delay is sufficient to enable a prevaricating witness to collect himself, and the judge, if he disapproves the design of counsel, may defeat it by varying the terms of the question. The objections to the practice are, indeed, endless, unless we adopt a wholly inadmissible theory,—that both the counsel and the judge always want to learn the truth, and the witnesses always to speak it. It can answer only one good purpose that I can discern,—namely, to prevent counsel from brow-beating or bewildering a timid witness, a case that rarely occurs, and will never occur if the judge does his duty.

“Neither in the questions nor in the answers could I perceive that there was any reference whatever to the rules of evidence, as we acknowledge them. . . . Indeed, I believe the only rules that the criminal courts follow in regard to evidence are those which estimate its weight, after it is heard or received. Nothing would seem to be excluded. Unless juries in France are much more perfect tribunals than in England or America, parties have no safety in either criminal or civil cases, unless the evidence is scanned *before* it is heard. I have had sufficient experience to know that judges are a thousand times better triers of evidence than juries, and that the latter should not be permitted to hear anything that is not, in the language of our law, competent. It may look captious in counsel to be forever objecting to incompetent testimony; and unless the judge will support him, it may sometimes hurt his case with juries, such as they have been made by flattery and by unreasonable deference, to the prejudice of the rightful authority of the court. But it is the true course for counsel, and if I were to live my professional life over again, I would follow it even more than I have done.

“The mode of examination, and the latitude taken in it, gave rise to the most dramatic scene I have ever beheld out of a theatre. A witness who was under examination stated

that when the alarm of fire was first given in the village the defendant was seen by him in a certain position. The president said that this seemed to be in contradiction to what another witness had said, who had been examined the preceding day; and he called that witness up and made him repeat. He not only repeated, but said that at the time the first witness mentioned the defendant was elsewhere; and the president immediately asked the defendant (and in a capital case, too!) how that was. The defendant rose and not only denied, but vouched another witness to contradict, what had just been said, which witness the president also called and examined; and thus there were three witnesses on the stage, with the defendant (whom all Berryer's efforts could not silence), the president of the court, and the *parti civil*, the prosecutor, all talking at once, and with about as much vivacity as I had seen the same number of persons a night or two before go through a scene at the Théâtre Français. How the truth fared in the mêlée I was not sufficiently acquainted with the bearings of the facts to know. As soon as the colloquy was over, the president went on as before with the first witness.

“ All this time the jury did not seem to be thought of. The witnesses spoke to the judge, the judge to the witnesses, and the jury took no part even in the lively scene I have just mentioned. The case turned too much upon a conflict of testimony to be interesting to me, and I left the court after hearing Berryer on some incidental matters, without returning the next day to hear his summing up to the jury. On one of these points I recollect his drawing himself up to his height, and, with the roar and violence of a cataract, absolutely burying in the deep an official of some kind who appeared to be of counsel with the prosecutor, and who had presumed to deny something that Berryer had said. The

defendant was finally acquitted, and then I saw in one of the French papers that Berryer had refused to take for himself the fee which Dehors had made up for him, but had given it as a portion to Dehors's daughter, who was engaged to be married: all *à la mode française*."

While in Paris Mr. Binney met Baron Pichon, whom he had previously known as *chargé d'affaires* of the French legation at Washington, and who, in 1796-97 had held a post in the office of Talleyrand, then Minister of Foreign Affairs. The baron told Mr. Binney of an incident of that day, which the journal records as follows:

"It is well known that the French government regarded the recall of Mr. Monroe by General Washington with dissatisfaction, and would not receive and accredit General Pinckney, who was appointed minister to France in his place. At Mr. Monroe's audience of leave, Barras, who was chief of the Executive Directory, made a reply to Monroe's farewell speech, and took occasion in it to distinguish between the people of the United States and their government, in a manner highly insulting to the administration, and which kindled a flame of resentment in all the people who were not already taken in the snares of Mr. Jefferson. The speech of Barras, Baron Pichon informed us, was to his knowledge prepared by Tom Paine at the instance of Mr. Monroe,<sup>1</sup> with the approbation, of course, of Talleyrand, Barras, and others. The refusal of the Directory to accredit General Pinckney was, he also said, the work of Mr. Monroe. The object of this treasonable complot was to bear upon parties in the United States, and to sustain the Democratic party under their defeat in the recent election of Mr. Adams to the Presidency.

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<sup>1</sup> Monroe's connection with the speech is denied by his admirers. There is, of course, no legal proof of it.

“ I am not aware that Baron Pichon had any motive whatever for misrepresentation. I do not believe that he misrepresented the facts in the slightest degree. The papers, he said, passed under his own eye in the Bureau des Affaires Étrangères. His post was a confidential one. He held it through the period of the interrupted relations between France and the United States which ensued, and was confidentially employed by Talleyrand to bring about a restoration of them, which began in a correspondence between Pichon and Vans Murray, the American minister in Holland. Mr. Adams was much censured for again sending ministers to France, after the return of Marshall and his colleagues, without some amends from France for their treatment of our envoys. His act increased the divisions of the Federal party, which finally destroyed it. Had he been aware of this anecdote, it would before this have made a figure in the political history of the United States, as well as in the private history of Mr. Monroe. General Washington, it must be admitted, was an admirable judge of men. Though he appointed Monroe, the latter never had his confidence, nor deserved it.”

During Mr. Binney's visits to Paris there were many signs of the political unrest which prevailed in Louis Philippe's reign, and which has, indeed, prevailed more or less ever since. His journal contains a few references to the state of popular feeling.

“ July 19, 1836. . . . At the close of the entertainment [at a circus] a little fellow, called in the bill *Le petit Auriol*, came forward in the mimic dress and hat, and with mimic manners, of Buonaparte. He did not say a word; but he walked, and put his hands behind his back, and took snuff, and moved his head up and down without moving his body, and at every new turn the whole house bore testimony to the faithfulness of

the imitation. But the manner in which they did it was what struck me most. There were no *vivas* or huzzas at any time of the performance, very little clapping, indeed. Throughout, the spectators, as at every French spectacle that I saw, were as far from an *éclat* of any kind as from dullness. They were cheerful and highly pleased, as they shewed by their attention and their smiles and an occasional murmur of delight. But at the imitations of *Le petit Auriol* there was a mixture of smiles and sighs, a deeper breathing than common, and such tones as showed that the chords of their hearts had been touched. Yet the Emperor had gone into banishment more than twenty years before, and most of the spectators had never seen him. It was to be explained only by the supposition that the memory of his person and personal habits and gestures had been kept alive by the deep affection and admiration of those who had seen him, and were thus known familiarly to those who had not seen him. So it now is with Washington and the people of our days. I do not mean by this to compare Washington and Buonaparte; though unlike as they were, I have no doubt that there was something in Buonaparte that touched the French people, and especially the people of Paris, as nearly and intimately as anything in Washington has touched us. More so. Much more so. Of one thing I am certain, that, despot as he was, the weight of his sceptre was not felt in Paris; and that either by what he did for their pleasure or their ambition, or by what his successors have omitted to do to these ends, there is in the now living and moving mass in that city more affection, admiration, and enthusiasm for him than for any other man or name. . . .

“ The period of my first visit was marked by great solicitude among the friends of the King for the safety of his person, attempt upon attempt, of the most daring kind,

having been made in the course of that year. The King himself yielded to it, though it was said he did not partake of it. The daily talk was of conspiracies against him. He consequently did not at this time appear in public, nor were private individuals presented to him. The opening of the splendid arch, which had been erected at the Barrière de l'Étoile, was appointed to take place at the approaching celebration of the *trois jours*, and a great military display was intended to accompany the spectacle; but there were so many threads of conspiracy in the hands of the police, it was said, as made it inexpedient for the King to appear at the celebration, and it therefore did not take place in the manner intended. We had no disposition to be in Paris while the Rue de Rivoli perhaps should be unpaved for the purposes of another insurrection, and accordingly made our arrangements to depart upon our tour beforehand."

From Paris Mr. Binney went by Belgium, but recently established as a separate kingdom, Holland, still armed and only prevented by the disapproval of the Powers from renewing hostilities, the Rhine, and the Black Forest to Switzerland, whence he entered Italy by the Simplon Pass. In a letter to his son, ten years before, he had confessed with regret to "the want of a very keen relish for mere nature," but if this self-criticism was justified, what he then lacked was rather the development of the appreciative faculty than the faculty itself. Certainly the journal of this tour does not show any lack of appreciation of natural scenery. Thus of an evening at Thun he wrote: "My chamber in the hotel looked out on one side from the southwest to the southeast, but I did not perceive the treasure it opened to me until I had extinguished my candle and got into bed. A bright moon was then shining, and directly in front of me lay the Blüm-lisalp, its broad summit spread like an inclined plane before

me, glittering with its eternal snows under the moon. I sprang from my bed to the window to take in better this splendid scene, and for an hour or more I kept between the window and the bed, unable to leave the view for more than five minutes at a time."

Of the view from the terrace at Bern he wrote: "I could not cast my eyes to the Aar, follow it until it was lost under its high shores, and then rise up to the Blümlisalp and the Jungfrau and the brother peaks, without sighing that my lot debarred me a daily walk over this same terrace."

Of the view at Arona he wrote, after mentioning the colossal statue of San Carlo Borromeo: "I did not cease to think of [the statue] as a much poorer shew than a mammoth cheese or a big pumpkin until I looked across the lake to Augera from my bedchamber window at Arona, and beheld under a bright moon such a scene as drove from my mind all recollection of the absurdities of man. A high promontory shoots out into the lake from Augera, bearing on its summit the ruins of an ancient castle, with which the moon worked witchcraft."

In Switzerland the political institutions, wherein aristocracy was more intermingled with democracy than is now the case, were an additional subject of interest, and it is characteristic that Mr. Binney's journal contains a detailed statement of the constitution of the Confederation, and of every canton which he visited. On one occasion he was able to learn something of the way in which public opinion made itself felt.

"As we approached the city of Zürich, we met a number of long, low wagons, filled with men, returning to the country. In one or more of them they were singing a hymn or psalm, not vociferously, but in the ordinary tone of church music. The men were well clad, of apparently good frames

and health, but none of them, I think, of more than the average height. Some of them had the leaves of the fir or pine in their hats or button-holes. They had been at a public meeting in the city. When we arrived, the town was full. It was said that twenty thousand had assembled there to testify their opposition to a demand the French minister had made upon the cantons to expel certain persons who had been plotting within their territories mischief to the Orleans dynasty. Young Napoleon, the nephew, was the pivot of these conspirators. The Zürichers had a regular town-meeting, adopted resolutions, made speeches, fired a few big guns, and retired quietly home. It was so truly American that I felt as if I had got there too. It was the first time on the Continent that I recognized the existence of *the people*."

The journey to Milan was made in company with the family of Mr. George Ticknor, an old acquaintance of Mr. Binney's. After a trip to Venice and the Lombard cities, he rejoined Mr. Ticknor at Milan, and the two parties set out together for Florence, or rather for the Papal quarantine station at Castel Franco, a stay in which was a prerequisite to going farther south, as the cholera had been severe in North Italy, and the dread of it still continued. The quarantine system, however, seemed intended as much to squeeze money out of travellers as to exclude the disease, and, to Mr. Binney's mind, had no sanitary value whatever. His journal describes it with some detail.

"Wednesday, 19 Oct. [1836.] The first post after leaving Parma for Bologna is Sant' Ilario, a short distance within the territory of Modena; and before crossing the line it was necessary to submit to divers sanitary ceremonies of a most edifying kind. I will therefore endeavour to describe them.

"At the boundary line our carriages were stopt, the post-



horses were taken off, and the postilions rode soberly back to Parma, leaving us in the road. No other horses were in presence or in sight, nor could we see where they were to come from. As we were still, however, in Parma, I thought I might alight and look around until further orders. Just by the line were a number of persons employed in drawing off hogsheads of new wine or must on the Modena side, and putting it into hogsheads on the Parma side. The hogsheads from Parma were, I presume, not permitted to enter Modena, and the wine would only come out in buckets. My servant brought me a cup of the must, which was good, and which is reputed to be wholesome. I did not like it, however, as well as new cider, and felt no disposition to try a new article extensively, which might play a dangerous and very critical trick in cholera times.

“A signal was soon given for returning to the carriage, and then several persons approached, who held communication with us at a most respectful distance in the road. Our passports were thrown to them, they were taken up by tongs, placed in a smoking box, and most villanously fumigated. We perceived that after being smoked for ten minutes the principal functionary opened the papers with the tips of his fingers, held his nose well off while he read, and kept himself cautiously to windward. Great solemnity was observed, and everything like a horse laugh kept under by these people, at least until we should be gone. Then no doubt they took their satisfaction.

“After reading, and writing a *visé*, a bill of the expenses was drawn up and thrown into the road for our couriers to pick up and pay, and when they signified that they were ready, a tin cup containing some disinfecting liquor was held out to them at the end of a ten-foot pole, and the money was dropt in.

“Now appeared our post-horses approaching from Sant’ Ilario, and with them a carriage and two horses, out of which, within the Modena jurisdiction, stepped two good-looking fellows in uniform, with an epaulette on each, and rather a smiling face, but armed with a carbine each, and I know not what else, and there they remained for the present.

“Our passports were thrown into the road for the couriers to take up, and our carriages were then pushed by some Parmesan man-power until the poles of the carriages were fairly in Modena, without any entrance by the propelling force. Horses were then put to, and we passed slowly, until we had got beyond the officers and their carriage, when a halt was ordered. The carbineers got into their carriage, and drew up in our rear, and after a communication that their orders were to shoot us if we attempted to leave the carriage, we all went ahead.

“Such are the Duke of Modena’s initiatory precautions against the cholera, a disease that everybody on earth but the Duke knows to hold quarantine in contempt, that springs up into the air from the places it attacks, and then down again into some other place without reason or rhyme, and then up again before its victims can be counted, as if it had been a vulture that had pounced upon his prey and was off before he could be seen.

“The Duke, however, did not stop here. We were not permitted to pass through Reggio, but stopt on the outside till horses were brought to us; and although there were fifty persons of the lower order in the neighbourhood of our carriage, there was not one who did not keep carefully to windward. Some of them were beggars, squalid and in rags, and execrably dirty, and you may imagine that their apprehension did not keep them farther off, as we had not the choice of getting to windward of them.

“Modena we passed through as a pauper is passed through a township where he has no settlement. There was no way outside the walls, perhaps. I think our post-horses were changed within the town, but we did not leave the carriage, and the carbines were close behind us. I could see smiles, however, and tittering. It was a money-making affair under pretexts, and without any real apprehension or cause for it.

“At two posts from Modena we crossed the Panaro, a small river, on a good bridge, the long pole and tin cup having been held up to the couriers for the bill; and in a quarter of an hour more we were whisked to the left into a building looking very much like a penitentiary. Gates without and gates within were unbarred and barred again to let us into the interior and to keep us there, *tam* to take our bodies, *quam* to keep them, until it was known whether we had the cholera or were going to have it.

“Castel Franco is on the borders of the Bolognese territory, and may have been a fortress,—I mean the place we inhabited. The town itself is inconsiderable. Three sides of a square, of probably eight acres, built up with structures that might have served for granaries or barracks, and the fourth side with a lofty stone wall, made our inclosure. The interior was an ample grass lawn, where we could walk in dry weather, and the buildings or some of them had covered arcades, where we could walk when the weather was bad. Our dormitory was a fire-proof, perhaps a bomb-proof, stone building, for the most part, but not in our quarter, having iron bars like a prison at the windows. The ceilings were arched, the floors stone or brick, the walls extremely massive. The apprehension of fire was reduced to its minimum.

“The word ‘quarantine’ did not appear in any of the instructions that were given us for our government. The

thing was called *contumacia*, and we were described as *contumaci*, as if we had come there in contempt of court, and were criminals. The punishment for our contempt, except the mere confinement, was not severe. Our party had separate apartments assigned to us, for sleeping and for eating. We had also servants allotted to us to make our beds, sweep our rooms, and serve our meals; and these were as much *contumaci* as ourselves. They came in with us, and might go out with us, and were under all the restraints that we were.

“The principal servant, named Malaguti, a young man of twenty-five, was a being that it would be impossible to find from Passamaquoddy to Cape Florida. He spoke Latin, was, he said, of respectable parentage, able-bodied, and rather good-looking, civil and obliging, and the most humble, submissive, timid creature that I can conceive of. His bringing up had crushed him. He did not feel himself to be of the same race with myself; he did not certainly act as if he so felt himself; and he complained to me that he was without capacity to do anything but to serve in that humble way. It was only by this complaint that I perceived that his education had not quite eradicated the feeling of manhood in him. We all liked Malaguti. We never called his name that we did not hear his answer immediately. To me it was, ‘*Si, Eccellenza,*’ to the young ladies, ‘*Si, Principessa,*’ and he was instantly before us. This was always his style of address or response. We were quite sorry to part with him; and when we departed, on my giving him a larger fee than he expected, he wept like a child, and, begging my pardon for the liberty, seized my hand and covered it with kisses. It would not be possible to find, in all our country, nor perhaps out of Italy, a being so unmanned.

“Between the line of buildings that we occupied and the

inner gate there was an open space of thirty feet; and between the inner and outer gate were buildings in which the quarantine officers lived, and where our meals were prepared. At a small window in one of these buildings our servants received our meals, and held communication for us with the outer world; for they were obliging in all the departments, and would send anywhere for anything we wanted. Truffles came to us from Bologna, and game, or whatever we asked; but our very crockery was in *contumacia*. The servants washed it, for aught I know smoked it, and only in the purified state was it returned to the kitchen through the hole in the wall.

“All persons who came in on the same day were at liberty to mess together, a privilege we did not extend beyond our own party. All such might shake hands together, but persons coming in on different days were restricted in their intercourse. If contact of hands took place between them, the party who had been longest in quarantine took date with the person who had been there the shortest time, and had so much more time to suffer. Such a one was properly in *contumacia*.

“We were not practically restrained in conversation without contact, but across the lawn I have spoken of, in the centre of the square, were drawn lines, or ropes, about three feet from the ground, running at intervals of about six feet apart from post to post, over the whole lawn. It was so arranged that persons coming in on different days might walk and have intercourse in these alleys, separated by the ropes. But we did not much attend to this, always avoiding, however, the shaking of hands in cases not permitted.

“During the confinement the weather was in general excellent. The many Americans, Russians, and one or two Englishmen made pleasant society; and with reading,

writing, and cyphering, that is, doing nothing, we got along very comfortably. On the morning of the 1st November, All Saints, the doors were opened to us, and we travelled with a clean bill of health to Bologna."

To-day the only danger to travellers in Italy seems to be that of having their baggage opened in transit and the contents stolen, but at the time of Mr. Binney's trip there were reports, at least, of more serious danger.

"About half a mile from our hotel [in the Apennines, between Bologna and Florence] the courier observed from the bright light in the windows that the host had received his letter of advice, and was prepared for us; and from the time of this discovery the forest-trees looked larger and the Apennines less savage, and in a few minutes we were by the side of roaring fires and at a good supper-table, for which a cold and hard day's ride had prepared us. Our host was all civility, and our bedrooms and beds most comfortable. The house had always been famous for its accommodations, very much beyond what a traveller requires to satisfy him after a day's hard travel in the mountains; but it had also been famous for giving shelter to robbers, who robbed and murdered the travellers soon after leaving their hospitable host. The father of our landlord had been executed for such peccadilloes, but his son was not thought to have forgotten the lesson. We did not feel ourselves entirely safe, however, the next day until we had crossed the summit and descended to Cafaggiolo. . . .

"After passing through Spoleto [some weeks later], we went through a narrow pass in the Apennines, dark, savage, and with as bad a reputation as any part of the country between Florence and Rome. As we were going up the hill near the top of the pass, I lagged behind the carriage, having preferred walking, but my servant immediately came to me

and begged me to keep nearer the carriage. He said he would explain the reason another time, but it was unnecessary. . . . When we were down we found ourselves at the close of day in a black-looking village, with knots of ill-looking idlers about the post-house, talking of a robbery that had just been committed, and they invited us to stay the night. I was none the more willing to stop for such a story, for if there had been or was to be a robbery, I thought Strettura must be the place. We accordingly pressed on, observing the precaution not to light our lamps, until we got out of the infected district, and in an hour or so reached Terni in good safety. On leaving it next morning, we had the pleasure of seeing two 'gentlemen of the road' sitting handcuffed and pinioned in a cart, three or four officers alongside them, and horsemen armed with carbines immediately behind. By this retinue, they must have been desperate fellows."

At Rome Mr. Binney's interest in sculpture led him to make the acquaintance of Thorwaldsen.

"January 11, 1837. . . . Thorwaldsen's studio has the models of his Christ and Apostles, the marbles of which were sent to Copenhagen. I confess they were above me. The style was too severe, and while it was evident in these, it was more so in his Graces and Venus. There were also among the plaster models those of his head of Napoleon, of Byron, and of Scott, and I liked none of them. The marble of his bas reliefs of the Triumph of Alexander, which have been executed in stucco in the Pontifical Palace on the Quirinal, was more to my taste. I was, on the whole, grievously disappointed, and it was of that painful kind which springs not from the defectiveness of the work, but of the observer, for Thorwaldsen's reputation is perfectly established. It was impossible to find fault with any of his works as wanting

truth, or proportion, or classicality. They had all this, but they all had the stern and severe character that had been transformed from the living countenance of Washington, and perhaps from the old Greek philosophers, into their busts and statues. Byron had no right to look so, nor Scott, nor even Buonaparte, still less Venus and the Graces. . . .

“Friday, 13 January. . . . I left Thorwaldsen’s studio with so unpleasant an impression of his works that I was determined to try the effect of an introduction to him, to see if an hour’s conversation with him would have any effect of softening them to me, of bringing them down to actual life, of getting some sympathy for me, which they seemed to want. Accordingly, after passing an hour this morning in the studio of Tadolini, a Bolognese sculptor, where the usual works of Venuses and Graces were going on, and with so little about them to take hold of that I brought nothing away, a friend took me to Thorwaldsen’s residence by appointment, and introduced me to him. My introducer then left me, and I passed two hours with the agreeable old man, but upon reflection what an interview it was!

“The apartments and the house in which Thorwaldsen lives are near the Piazza Barberini, directly north of the Quirinal, and like his studio, near the same place, are the roughest things possible. The three or four rooms which he seemed to occupy had little or no furniture, being crowded with paintings on the walls, pieces of sculpture in various parts, and a figure as large as life which he was employed in modelling, a cloth being tied round the head and body, so that I could not tell what it was.

“In a corner of one of the smallest of the rooms was his bed, a mattress, or a cot-bedstead perhaps, made for the day, but by no means remarkable for the *propreté* of the coverlet or of the linen. It may be recollected that it was near the



close of the week, and a little in advance of 'clean sheet day.' But directly at the head of the bed was a cartoon of the Virgin and Child by Raphael, the last thing that his eye rested on as he retired to rest, and the first thing that it beheld in the morning, and I dare say he thinks little of the colour of the pillow that is under it.

"The artist has often been described, I suppose, but I must describe him for himself. His toilet was not made, and I am not certain that it ever is. His outward covering was an old great-coat, reaching nearly to the ankles, and tied round the waist with a bit of rope. The colour of the *robe de chambre*, for I dare say it was known by that name, was originally, perhaps, gray, material known among us as lamb-skin, now whitened with marble-dust and plaster, and bespeaking its affinity to a dealer in flour of some kind.

"The artist's feet were, I think, without stockings, and were thrust into a pair of those pantoufles that are sometimes given to visitors to move over the polished floors of palaces. There was no danger, however, of slipping on Thorwaldsen's floors, had the polish been given to my own soles. There had been neither water nor rubber upon them within the memory of man!

"On the old man's head was a cap of some kind, cotton or woollen, without shape, lying upon the head rather than covering it, and underneath on all sides were straggling locks of hair, of a dirty gray, having nothing soft or silky or venerable in them, but suited very well to his face, which was square rather than round, chiselled by nature, rather than moulded or modelled, pale but not sickly, and lighted up by a pair of light-blue eyes, which belonged exactly to the colour of the hair and complexion. The expression was kinder and more benevolent than I should have looked for in that square and rather severe countenance.

“ He received me very kindly, with the modesty of one who had never known what flattery was, and, carrying me about his rooms to shew me what was in them, began conversation with me in French. Yes, French it was, more French certainly than anything else under the sun, yet such French as never before was spoken, and, unless they make a plaster model of it, will never be spoken hereafter. He split it off in blocks, but it was not blocks of Carrara, nor of any other homogeneous stone, but real breccia, pudding stone,—French, Danish, and Italian, all mixed together, sometimes most of one and sometimes most of the others. When it was most French or Italian I guessed it pretty well, when it was most Danish I was thrown out completely, and sometimes did not get the scent again for three or four minutes. He was very communicative, and the only use of my French was either to shew (sometimes against conscience) that I understood him, or to edge him on when he seemed to be coming to an end.

“ Thorwaldsen is reputed to be rich, and therefore works only at pleasure. He has one child, a daughter married in Rome, and this, it is said, is his only bond to Rome. If he ever had a wife, this daughter is not her child. He told me that he wished to live to finish a work upon which he was engaged, a history of the progress of the arts, in bas relief, upon which he employs his leisure. It begins with Apollo and Pegasus,—high enough up, certainly,—and how far he has brought it down he did not say. The praise of excelling Canova or any other modern artist in bas relief is, I believe, not denied to him by any one. His superiority in statuary is not so generally conceded. His heart, I thought, was not in Rome. He seemed sensible of the kindness and homage that had been shewn him there, but he spoke of returning to Copenhagen with enthusiasm. He had made his country a

part of himself, and himself a part of his country, and it was not wonderful that he should want to return.

“He pointed out to me the merits of several paintings on his walls, almost all quite modern, most of them painted and presented to him by his friends, and among the rest the best portrait of him I have seen, by Horace Vernet. I mean the best resemblance.<sup>2</sup> I have never seen a French portrait that pleased me as a painting. He praised some of them lavishly.

“I thought I would try him in his own art, and said, ‘Sculpture has confessedly made great progress during the last half-century. We seem to be getting up to the eminence on which the Greek sculptors stood. But is it so with paintings? And how do we account for its not being so, with the hundred-fold more beautiful works in painting than in sculpture to instruct and inspire the painter? We are but three centuries from the finest paintings the world has ever seen, and have myriads of these master-pieces around us in Rome. Why are they not imitated?’

“‘Oh,’ said he, ‘painting is doing well. Time does a great deal. It softens colours and tints so admirably. When these shall have had that advantage it will be more just to make the comparison.’ He warded off very adroitly the compliment I had intended for himself, but he did not satisfy me.

“He then paid me in my own coin. Among the modern paintings were two or three sea and water pieces, and one, I think, of the Bay of Naples, with several ships in motion, —English, Danish, American. Running his finger over it, he said, ‘Who places a ship on the water like your country-

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<sup>2</sup> One of the best resemblances of Thorwaldsen may be seen in a head of Lorenzo de’ Medici, at the front of the American edition of Roscoe’s life of him. (Note to the MS.)

men?" He passed with the point of his finger over the outline of one of those clippers, or flying schooners, which seem to be distinctive of American taste and skill in ship-building. 'It has life,' he said. 'It does not sleep even when it is at anchor; or if it does, it is with one eye open.' I had nothing to reply but a smile and a bow.

"I have rarely passed a couple of hours more delightfully. He was spirited and bright, but kind, familiar, and simple. The character of the artist has in some degree affected the impression of his works upon me; but still I cannot think that he is equal to Canova, remote as the works of Canova are from those divine remains of the Greeks which the Gallery at Florence, and both the Vatican and Capitol in Rome give out so abundantly."

Another celebrated man, though very different from Thorwaldsen, whom Mr. Binney met in Rome, was Bunsen, from whose society he seems to have derived much pleasure.

"Wednesday, 14 December [1836]. The minister of Prussia, the Chevalier Bunsen, the secretary and successor of Niebuhr, occupies a house on the Capitoline Hill, and is perhaps a better authority for the true site of the temple of Jupiter Capitolinus than Van or Nibby. He informed me that his house stands on a part of its very foundations, and as I passed with him this morning into the garden, he pointed out to me a part of the foundation wall as being the *ipsis-simus*. If so, the Aracœli has not the honour, for the palazzo of the minister is to the northward of the steps, perhaps three hundred feet, and the Aracœli is to the southward and immediately adjacent. . . .

"Mr. Bunsen is not only a Protestant, but deeply attached to the liturgy of the Church of England. He appeared to take an interest in the American Episcopal Church, and conversed with me much about it. He had little doubt

that Prussia would obtain the Episcopate from England, and would introduce a liturgy into the Prussian Protestant Churches. . . .

"Monday, 26 December. Being fresh from an assembly of Pope and Cardinals, I took the liberty of asking M. —<sup>3</sup> his opinion of the religious and literary character or attributes of these personages. He is a very competent judge, having resided a long time in Rome and, I may say, among them, as much as a Protestant can do. He is a man of great accomplishments himself, a scholar, a linguist, but withal, I may suppose, an uncompromising Protestant, and therefore possibly not impartial, certainly not favourably inclined. I give you the result of his remarks this evening during the two hours I passed at his residence.

"The state of religion in Rome is the worst possible,—an affair of priestcraft and ceremonies. The Pope (Gregory XVI.) is ignorant and fanatical. He is thought to have a decent acquaintance with Latin, but he cannot read a sentence of Greek in the New Testament. This seems scarcely credible.

"As a body the Cardinals are without learning. One of them in prospect, Angelo Mai, formerly the librarian of the Vatican, is now experiencing their bigoted hatred of learning, and must sacrifice his own love for it to get into the order. He had prepared with great care a copy (or translation, I forget which) of the oldest Greek manuscript Bible in the Vatican, scrupulously compared and critically anno-

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<sup>3</sup> The journal has this note: "I may now write the name of this gentleman, as he has been for some years dead. It was M. Bunsen, the Prussian Minister, and the conversation occurred in his house on the Capitol Hill, where, upon his general invitation, I paid him a perfectly unceremonious visit in the evening, found him in his slippers, with Mrs. Bunsen, an English native, and their many children about them, sipping their tea, of which I partook, and passed a most refreshing two hours, without interruption. July, 1868."

tated by himself, in eight volumes octavo. It has long been ready for publication, and he has been waiting as long for permission to print it. The permission does not come. The work is not thought to be necessary. *They have the Vulgate!* If Mai's work is not already burnt, which is probable, it will be. M. [Bunsen] has heard that it was about to be. There was an era when better things were looked for. It was when the Papacy was expected to fall to Cardinal Consalvi. It was promised, and it was treacherously given to another. The present Pope was expected by nobody, and wished by nobody but as a *pis aller*. He was chosen for spite.

“This account may appear improbable in an age when, though learning is not so common as it was, it is shameful to be without it, even in an academical body, and more so in a conclave of Cardinals. As nothing was said against the personal morality of the Cardinals, we may suppose them not to be very vulnerable. The stories in regard to the Pope are supremely absurd. As to their religion, there has been no period when perhaps it has been any better than priest-craft and ceremony. Still, the faces of more than one indicated an abstemious, ascetic life, and it is difficult to assign a motive for this in such a station except religious zeal and sincerity, or an ardent love of letters. The remarks do not, however, say the contrary of this. They relate to the body and its general character. Exceptions in particular cases are not inconsistent with general ignorance, irreligion, or formality.

“The impression of M. [Bunsen] was that the indulgence of Protestants in public worship was regretted by the Pontifical government, and would be withdrawn on the slightest pretext. To reconcile the tradesmen and others who live upon the expenditure of Protestant strangers, it cannot be conveniently withdrawn without some pretext. The gov-

ernment of Rome is a pure despotism, but the Pope has heard, no doubt, of the *last hair*. The camel's back has been broken often enough at Rome to kill him forever, but Romanism is the miracle that always brings him back to life again."

The carnival season of 1837 gave an illustration of the feeling of the citizens towards their government. The journal alludes to this, as follows:

"Saturday, 28 January. This is the first day of the carnival, and a miserable beginning it is. The cholera is at Naples, has been recently at Ancona, as well as in all parts of Lombardy, and the Pope is certain that the Virgin alone has protected the city of the seven hills. Prayers have been addressed to her daily for the last two months to defend Rome from the cholera, and Rome has escaped. The Pope has therefore ordered a proclamation, requiring all good Catholics to forego the customary light amusements of the carnival, and, in fine, prohibiting them. There are to be no masks, no *confetti*, no *moccoletti*,—nothing, in fine, but some miserable horse-races, which, being of short duration, and poor even while they last, could have been better dispensed with than the others. In substitution, prayers to the Virgin are to fill up all vacant spaces. In consequence the Romans look very black; they swear they will not give a single prayer more to the Virgin than they would have given if they had had their customary recreations. Nor is it matter of recreation only; many of the people derive material succour from the sports of the carnival, and they lay out their little capital weeks beforehand in the requisite purchases. All this must be lost,—not only profit, but capital itself; and they look very black, their eyes flash, and all say there will be a great thunderstorm. . . .

"Tuesday, 7 February. The Pontifical government,

being, it said, greatly edified by the good behaviour of the people, who had borne the deprivation of the carnival very well, at length relented and permitted *confetti* and *moccoletti* on the last evening of the Saturnalia.

“ You must remember that all burials at Rome are by torchlight, and that little tapers or *moccoletti* are lighted on the last evening of the carnival as a derisory funeral ceremony, and the sport of the occasion is the attempt of every one to put out the lights of everybody else and keep his own burning. You may imagine the merriment which a license of this kind may occasion. The *confetti* are sugar-plums made of plaster of Paris, which are thrown about in all directions to heighten the fun. It is a season of good-humour and boisterous merriment, throwing off all restraint and observance of ceremony. In the evening we entered the Corso in our carriage, and our servant procured a bundle of rush-lights for us. We had not advanced twenty yards before our coachman Antonio told us that . . . we had better take the ladies back to the hotel. All was dark, no lights were permitted, and where any one was shewn from an upper window violence was threatened unless it should be instantly extinguished. We turned off suddenly to our hotel. All other carriages were forced off. Numbers of men in white hats by a concerted action had done this, and took possession of the Corso from one end to the other. The Pope’s dragoons, under the apprehension of some outbreak, came with their cavalry on to the Corso, and the same white hats quietly took their horses by the head, and led them off. The soldiers or their officers had the prudence not to strike. They asked what all this meant. The reply was that the will of the Holy Father should be done as he first ordered. The carnival should not be buried with *moccoletti*. It was not dead. It had not been alive. It was a case of *fausse couche*,



and the ceremony did not belong to such an event. With the utmost gravity they persisted, committing no disorder, permitting none, and giving the Pope to understand, as I suppose, that he must not consider he was quit of old scores by his ridiculous indulgence on the last day. So the carnival ended in true harmony with its previous course. The Virgin did not get an additional prayer, but whether the Pope and his Cardinals did not get additional curses is a different matter."

The general impression which Rome left on Mr. Binney's mind, after two months' residence, is best told in his own words: "In reviewing my sojourn in Rome after taking leave of it forever, I am struck with the fact that not a single pleasurable sensation is associated with anything belonging to the people or city that I observed while among them. This is not true of any other place or people which I have sojourned with for such a space of time during any part of my life. I do not imagine the feeling to have been peculiar to myself. I thought it was common to all the foreigners I saw, and, except among the higher classes of churchmen and nobles, to the Romans themselves. The causes that operate upon strangers and denizens must, however, be different.

"It may not be very easy to divine the cause that influenced myself. I sometimes thought it was the air of religious intolerance, ever present in city and country, in the churches and in the streets. The confinement of the Jews opprobriously in a quarter by themselves had some effect upon me, but I had seen the same in Amsterdam without any such impression, and I was indifferent to the fact that it was worse with the Jew in Cologne, where he is not permitted to abide at all. I felt deeply the abomination of being turned outside of the walls to worship God after the manner

of my fathers, in a sort of hay-loft, with hostile guards at the door, signifying the insolence of a master in the presence of those he despises and hates, but cannot possibly fear. Yet I had lived in Italian cities, Milan and Venice, where there was no practical toleration of my religion at all, and did not feel either degradation or oppression.

“I might attribute some of the effect to the ruins of temples and palaces, which are visible everywhere in the southern and southeastern parts of the city, and to the consciousness that everywhere in those sections you are riding or walking over the buried works of the former rulers of the earth; but the truth is that I was never nearer to pleasure in Rome than while I was contemplating these ruins. Partly the satisfaction of beholding the traces of the majesty and accomplishment of the old Romans, and partly the absence of the modern Romans, who crowd the plain on the Tiber, but whom you rarely see on the Palatine, or Aventine, or the wider-spreading Celian, made me better contented to pass my time in these quarters than anywhere else. I do not think I ever felt melancholy in contemplating any Roman ruin, unless it might be the broken lines of the aqueducts, which in the deserted Campagna remind you of Tadmor and Palmyra. These ruins at the close of day and in the dusk of the evening look like phantoms which you may suppose are hovering round the graves of Neros and Caligulas, and reproaching them for having led the way to their decay and the downfall of Rome; and the absence of every trace of life in their neighbourhood makes the sight of them oppressive. But ruins generally are not the least pleasing part of Rome: they are certainly not pleasurable objects of contemplation, however instructive and exciting, but you feel in their presence rather more comfortably than elsewhere in Rome.

“ There are pictures, and statues, and frescoes innumerable, of such exquisite beauty that I am compelled to wonder that I could not look back to some of them, at least, with the gay emotions which the representations of some portions of mythology are calculated to excite. Yet whether it was the palace, like a prison, in which I saw them, or the neglected villa, or the proscriptive and intolerant church, or the Vatican, the seat of those infernal conclaves from which have proceeded the poniards of the Sicilian vespers and the fires of Smithfield, I cannot tell. Something, I know not what, was always present, not to prevent admiration or astonishment, or perhaps any intellectual gratification whatever, but the heart was not at ease, the spirits were not buoyant, there was no gayety of emotion, no animated pleasure. How much have I seen of the like kind in other cities in Italy, where perhaps I might have discovered some of the same saddening concomitants, had my mind taken that direction, but it did not, and I saw them not!

“ Like the poetical lover, who was unable to point out the particular feature or grace that made his mistress divine, and said it was ‘Celia altogether,’ so am I compelled, in seeking for the cause of very opposite effects, to say it was Rome altogether. It was her intolerance, her ruins, her prison-like palaces, neglected villas, proscriptive churches, and, above all, the people whom these things, operating on a proud spirit, have made bitter, sharp, sour, intolerant, fanatical, never for a moment jovial, gay, or debonnaire. It is Rome altogether that accounts for the effect, and I quit her, not sorry that I have looked upon all parts of her for two months, but heartily glad to get away from her.”

When visiting St. Peter's one day, Mr. Binney's keen, and possibly imaginative, eye detected what no other traveller seems to have called attention to,—namely, a likeness of

Thomas Jefferson, though not in the representation of any human face. Writing from Rome, he said, "Apropos of Jefferson, the best likeness I have seen of him is in the two Death's heads in the sarcophagus below the statue of Clement X. in St. Peter's. I looked again and again to see if they were not intended for a personage rather older than Death, but finally had to admit that they were intended for his son, who I think, according to Milton, had some of the traits of his mother, Sin, and was so far less respectable than his father."

After a stay at Naples, where Mr. Binney climbed to the top of Vesuvius with the energy and enthusiasm of a much younger man, the party went by steamer to Genoa, where the quarantine prevented their landing, thence to Marseilles, where four days of the same "solemn farce" were required, and thence by land to Paris.

During the whole tour he lost no opportunity to visit any botanic garden or flower show that came in his way, or to hear the best music wherever it could be had, in churches, at public or private concerts, or at the opera. At Rome he went to St. Peter's every Sunday (at an hour that did not interfere with the English Church service outside the walls), and usually with the keenest pleasure, but on January 1, 1837, he was forced to record that, after hearing some very poor music at an early service at the Trinità de' Monti, he had a further disappointment. "I tried to mend my fortune by going to the Cappella del Coro in St. Peter's, but my fate was unrelenting; for, to my horror,—yea, to my anguish,—a solo was sung an eighth above the organ all the way. Before it was half over I had a *verdadero dolor de tripas*, and when it was done there was not a tooth in my head that did not feel loose. Shocking to begin the year this way, and in Rome, too! It seemed extraordinary to me that the officials

of the chapel did not drive the man from the organ gallery. They sat patiently, however, and if it did not turn to their profit as a treat, no doubt it did as a penance."

The next week, however, he was able to write: "After church *in my own*, I took my usual station in the gallery of the Cappella del Coro, and enjoyed the highest musical treat I had in Rome. It effaced the horrid impression of the last Sunday. Four voices of excellent tone—a basso, a soprano, and two contraltos—gave several solos, duets, and quartos, and were followed magnificently by the organ and full choir. What added vastly to the zest was that I was nearly alone in the opposite gallery. The presence of a great number of persons, and especially their being near to me, always interferes with my enjoyment of music."

One of Mr. Binney's musical experiences at Paris, in April, 1837, surpassed all the others. "The greatest musical treat I enjoyed in Europe [was] a concert at the Société des Concerts,—Conservatoire,—which began at two and closed about four o'clock. The musical corps consisted of about eighty. Eight double basses will serve to indicate the force and completeness of the parts. It was the highest exhibition of instrumental music that I had ever witnessed or could conceive. The leader was Habanek, who did not touch the strings of his violin, but, with his bow in hand, his fine, tall, erect figure (though obviously a man of sixty) assisting all his movements, he preluded the very expression that the piece required, sometimes restraining the orchestra by his gentle motion to the delicacy of a whisper, and sometimes lashing them by the vehemence of his bow into the violence and uproar of a hurricane. The first piece was a symphony by Tagliasbeck, a name I never heard before, and the second Beethoven's 'Symphony in *ut minor*,' perfectly ravishing. It gave me at one time so violent a stitch in my side that I

had to press my hand against it with great force to remain in my seat. If any one required to know what a concert should be,—orchestra, salon, and audience,—he need only have been present at this performance. . . . The most profound silence was observed during every piece except at the conclusion, and with one other exception that discovered the musical breeding as well as sensibility of the audience. A passage of most exquisite beauty in Beethoven's symphony transported two or three voices into 'Bravo! Bravo!' and then hands not a few were getting into action, when a quick and impatient 'hist, hist,' from myself and twenty others in my neighbourhood brought all to immediate silence. We were losing all that remained of the beautiful passage by this ill-timed applause. The orchestra got it with interest when the piece was finished. These two symphonies, a trio by Mad<sup>e</sup> Falcon and two men, all French, and a concerto on the violin by a young *élève* named Dankla, were the whole programme. Beethoven's symphony made me indifferent to all that followed. From the date of this performance I shall feel myself authorized to say what is and what is not good music."

Leaving Paris a second time, Mr. Binney reached England in April, after a channel trip of unusual roughness.

"Thursday, 18th April [1837]. A norther, or nor'-wester, had been blowing several days, and was still blowing when we came down to breakfast, and when the steamboat agents were upon us for both the French and the British steam-packets for Dover. Whenever I have my choice I take an Englishman for my captain, if I can't get an American. An old salt named Hamilton had the British mail-packet, and I told him I would go with him if he would certainly go. He said he certainly would go if the water would let him go over the bar, which the shingle packed in

by the sea had increased, and made its draught less than usual; but he did not believe the Frenchman would follow him. At five, the hour named, he sent his mate down to the pier-head to look at the marks, and when he reported favourably, off we pushed with a good head of steam, some twenty passengers on board, including M. Chevalier, who was going on some public errand to London. As we ran down the long wharf to the pier-head, the steward distributed his basins by the side of each passenger, and gave me one which I pushed with my boot to a neighbour who looked as if he would require two if he required any. In two minutes' time I went to the companion to see how the boat would behave when she struck the waves on the bar, but the helmsman told me I should be wet to the skin if I did not go below, and I took his hint. I had not been down half a minute before we all felt that she was in it, and such a line of ugliness as she made, and continued to make, for an hour I do not think I ever before witnessed. Captain Hamilton gave the ladies his cabin, and me a sofa in an adjoining apartment, that I might lie down, for standing was impossible and sitting much the same. . . . Every man, woman, and child was dead and double sick, except myself, my servant, and the crew. . . . As we neared the island, and foothold came again, I went on deck, and the first word from Captain Hamilton was, 'Well, sir, the Frenchman would not follow us. He dared n't, sir; he dared n't. I watched him with my glass until his pipe was under, and there he lay, sir. He'll never show his paddles to this sea. Those French, sir, are very prudent, very. They're a cautious people at sea, sir.' "

A fortnight in London was followed by a month spent in driving through England, and into Scotland as far as the Trossachs and Edinburgh. The two places which seem to have excited the keenest interest were, as might have been ex-

pected, Oxford and Cambridge, in Mr. Binney's eyes the chief sources of England's greatness. Of Cambridge he wrote: "Behind this college [King's] and the others before stated [Trinity, Clare Hall, and St. John's] sleeps the Cam, unless when its slumbers are disturbed by the wherries of the students, a few only of which we saw, the fleet being laid up in ordinary for the long vacation, now begun. Stone bridges of classical form span this water, and on the other side are walks among noble trees. I sighed as I thought of my youth, while walking in their shade, and could I have gone back forty years would have selected this from all places in the world for my education. But I doubt not it must have been an education for England, and not for my own country. We are probably better made for our work and the condition of our society (only the present condition, I hope) by our own colleges."

Stratford-on-Avon was a keen disappointment, the attempts that had as yet been made there to preserve the memory of Shakespeare not being such as to commend themselves to an enthusiastic lover of his plays.

"May 4, 1837. . . . We closed our day with a poor dinner, in a poor theatrical tavern of Stratford-upon-Avon, everything in it and in the town looking as if it were designed to belittle Shakespeare, though, thank Heaven, that is not in the power of man. The room in which the poet was born is there, its walls and ceiling covered with names and nonsense, which we felt no inclination to add to; his tomb is in the chancel of the church, and his effigy against the wall; the hotel has all its apartments named after his plays (I believe I slept in 'Macbeth,' and the two girls in 'Juliet'); and England has not spent a pound sterling to prevent the whole from being as miserable a raree-shew as Punch would have preserved to immortalize Judy. The town is a poor flat



affair, the Avon itself had nothing on its waters but dirty barges, and the waters themselves were fast asleep."

From Liverpool to Manchester occurred the only railroad journey of the tour, and while it was not absolutely Mr. Binney's first experience of railway travelling, there was still some novelty in it.

"My carriage was placed on trucks upon the railway carriage, and passing quite deliberately through the tunnel, five minutes to a mile, making two stops on the road, and once returning a little distance to take another track, the whole time from Liverpool to Manchester was one hour, fifteen minutes, and this time was all we gained, for the railroad cost just as much as the posting would have done. Nothing could be more secure, and less shackling or shaking than the road, though it must be admitted that the springs of my carriage gave a false account of all the roads we drove over."

The tour ended at Portsmouth in June, just before the death of William IV. and accession of Victoria, and the party reached New York in August, after a safe but tedious voyage of over forty days.

## IX

RETIREMENT FROM COURT PRACTICE—GIRARD WILL  
CASE

1838-1844

**A**FTER his return from Europe Mr. Binney confined himself to office practice, mainly to giving opinions on legal questions. The opinions by which he is best known are those in regard to land titles, and the reliance upon these has always been practically as great as upon the policies of the strongest title insurance companies of to-day. In regard to his retirement, it is said<sup>1</sup> that an important case, involving litigation, was brought to him on January 4, 1840, a few minutes after noon. Pointing to the clock, he said, with a smile, but firmly, "At twelve o'clock I was sixty years of age; you are too late. I have relinquished the active practice of the law. Take the case to Mr. Sergeant." As a matter of fact, this could scarcely have been the first retainer which he declined on the ground of retirement, but he may have made use of the circumstance of its being his birthday to make his refusal more emphatic, and thus discourage similar requests.

His career in Congress, short as it was, galling in many ways to himself, and barren of any visible good result, had given the citizens no cause to be ashamed of their representative; and from this time on no man in Philadelphia commanded greater respect, or more of the influence which rests

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<sup>1</sup> The late Mr. William Tilghman was the authority for the story, and he had good means of knowledge.

## 1837-38] CHANGE IN JUDICIAL TENURE

solely on character and ability and is not due to the control of the machinery of political parties. This influence was not always successfully exerted, but it was always recognized, and he continued to be looked upon as a leader even long after his great age prevented his appearing in public.

Being of course keenly interested in all that affected the administration of justice, and especially the independence and integrity of the judiciary, he was very seriously concerned over the work of the Constitutional Convention of 1837-38, which submitted certain amendments to the vote of the people of Pennsylvania. These amendments changed the qualifications for the suffrage; imposed certain restraints on legislative power; subjected the governor's appointments to confirmation by the State Senate; made elective the offices of justices of the peace, clerks and prothonotaries of courts, recorders of deeds, and registers of wills, and, most radical of all, made the commissions of all judges run for a term of years only. Fairness would have demanded that amendments relating to such different matters be voted on separately, but they were submitted for adoption or rejection collectively, without any power of selection among them.

Before these changes were proposed there does not seem to have been any strong popular wish for any of them, least of all for those affecting the judiciary, with whose rulings no fault had been found; but, on the other hand, there was no decided opposition to them. They seem to have been thought a natural development in the line of so-called popular government, an inevitable condition of modern life, like the chess-board arrangement of our cities, the plainness of men's dress, long trousers, stiff hats, or any of the numerous sacrifices of the picturesque to the practical which have dis-

tinguished the nineteenth century. In Mr. Binney's eyes, however, the tenure of all judicial offices, even the lowest, during good behaviour, was essential to the due execution of the laws and the maintenance of the rights of the citizens, because by this tenure alone could the judges be free, as far as human beings ever can be free, from the temptation to give their decisions by the influence of fear or favour. He did not expect the governors to appoint ideally perfect justices of the peace, recorders, etc., but he knew that their appointments were likely to be at least as good as the nominations of party conventions, probably better; and he realized that the change proposed as to the minor judiciary would but too surely lead in the future to the making of all judicial offices elective. Could he have foreseen the time when it should be the custom for judicial candidates to be practically assessed for large contributions to the party treasury, as the tacitly recognized price of their nominations, he would have regarded the work of the convention with nothing less than horror.

At the request of those who shared his views, Mr. Binney drew up an address to the people of the State, urging them to vote against all the proposed amendments, since no discrimination among them was possible, but the address was mainly in regard to appointments and judicial tenure, and some parts of it may be worth quoting.

A third class [of amendments] proposes a restraint upon the executive, by making his appointments subject to the consent of the Senate, and by taking from him altogether the appointment of clerks and prothonotaries, recorders of deeds, and registers of wills, and giving it, with one unintelligible exception, to the people through their elections. . . .

If there be any doubtful point among those who have observed

the working of constitutions in the United States, it is this very provision for advisory power in the Senate. In many cases, through personal influence of the executive, it has no effect. When it has any effect, it has been questioned whether it does not take from the executive officer the responsibility which should rest upon him, and destroy all responsibility by dividing it among numbers. It has been more than questioned whether it does not enlarge the influence of intrigue and combination upon appointments to office. The true principle for guarding appointments to office is to make him responsible who nominates the officer, and this responsibility, to be effectual, must be felt by him who nominates, and known by every one else. It must be single, individual, and unavoidable. . . .

What are the two great arguments for the tenure of good behaviour? They are, first, that judges will in general more faithfully perform their duty when their office is not subject to determination by efflux of time or by the pleasure of anybody; and secondly, that judicial offices which are so subject will be accepted in general by men of inferior attainments only. The force of these arguments has been resisted and their truth denied; but both their truth and force are admitted by the proposed amendments. Why is a judge of the Supreme Court to hold his office for fifteen years, and a president of the Common Pleas for ten years, except that the judges who settle the law in the last resort, by which we are all bound, may be farthest removed from the influence of an expiring tenure, and that a larger range of selection from the higher attainments of the bar may be left for the bench of that court? . . . The difference in the proposed terms of judicial office concedes the very proposition that judges holding office for years will be governed by something besides their sense of public duty.

Upon this subject of judicial tenure, suffer us to ask you a single question. Constituted as man is, will judges in general be as impartial and upright on the trial of a cause when the renewal of their offices depends upon the favour of one of the parties, as they will be when nothing but misconduct can deprive them of their office? If this question must be answered in the affirmative, then the whole ques-

tion is answered, for in multitudes of causes, and most important causes too, the appointing power, or those who create and influence it, will be one of the parties in name, in interest, or in feeling. They will be so in every case of political excitement. They will be so wherever the constitutionality of a popular law is brought into question. They will be so wherever a humble individual, who has no stay but an impartial judge, is opposed to a political leader. They will be so in every case which extensive public opinion has already prejudged. These are the cases in which the interests of justice, the great permanent interest of the public, require that judges should be left to the support of an equal mind and undisturbed nerves, to do their duty without fear or favour, and yet these are the cases in which, if the amendments be adopted, the best judges may feel that their solicitude for a family and their love for their station in society are knocking at their hearts to persuade them to give a judgment that shall be acceptable to the friends who can renew their commission. How many will listen to this appeal we cannot tell. Is it wise to expose any of them to it? One man in a thousand may come out of such a fire like refined gold, and lose his office for conscience sake, but of how many of the rest should we have to say that they have preserved their office, but that their fine gold has become dim? We must deal with men as they are; and if the amendments deal with them upon any other theory, they are not fit to become parts of a constitution for a community of men. Would any man choose that his own cause be tried by a judge who depends for his office upon the opposite party? If he would not, let him not choose such a judge for any other person.

This address was signed by a large committee, and appeared in the papers on September 26, 1838, the election being held on October 9. Had a longer interval elapsed, the address might have had more effect, but this is doubtful. The changes accorded with the spirit of the time, and were approved by a large majority of those who took the trouble to vote at all in regard to them. While the result may not

have justified all Mr. Binney's fears, it has increased neither public confidence in the impartiality of the judiciary nor the efficiency of the various executive officers whose positions were made elective.

Mr. Binney's next act in regard to public matters was more successful. The Bank of the United States, being refused a new charter by Congress, had in 1836 received a State charter, and continued in business under its former officers, but without the strength previously derived from its connection with the national government. Its president, Mr. Nicholas Biddle, urged Mr. Binney to become one of the directors, as he had for a time been a director of the first bank, and also of the second, but he declined. He had too thoroughly disapproved the course of the second bank in the spring of 1834 (when it failed to persevere in curtailing its discounts and retiring its notes, in preparation for winding up its business after it had become apparent that Congress would not renew the charter) to have any confidence in those who were responsible for this vacillation. The new bank seems to have been unsound from the start, but, being the leading bank of issue in Pennsylvania, it practically controlled the currency of the State. In May, 1837, all the banks in the State suspended specie payments, resuming them after a while, but suspending them again on October 9, 1839. For want of a better currency, the paper of the United States Bank continued to circulate, though at a discount as compared with specie. Some people demanded specie of the banks, and even sued for it, but Mr. Binney did not, not wishing to embarrass the banks, though thinking that they ought at once to take measures to uphold their own credit and rid themselves of all connections with the United States Bank. The mass of the business men of the city, however, cared less about the kind of money with which busi-

ness was transacted than about the effect of a temporary stringency in curtailing business generally, so that all criticism of the prevailing policy was very unpopular.

Early in December, 1839, notice was given that certain loans of the city would be paid off on January 1, when interest would cease. The holders of the loans were given the option of taking, at par, a new loan at a lower rate of interest, which, under the conditions then prevailing, would naturally sell at a discount, or of being paid in checks on the United States Bank. Mr. Binney held a considerable amount (for those days) of the old loan, but his opposition to the proposal was based mainly upon his conviction of its essential dishonesty, and of the loss that it would entail upon those less able to stand it than himself. He felt that the time had come to call a halt, and, as no one else seemed willing to act, he determined to do so alone. Accordingly he wrote to the City Treasurer, stating that he was perfectly willing to let the loan stand, but that if it was to be paid off he would refuse payment by check on any bank that had suspended specie payments.

On January 1 he went to the City Treasurer's office and was tendered a check on the United States Bank, which he refused. He demanded specie, but the City Treasurer replied that he had no other means of payment than the check. The next day Mr. Binney wrote to Mr. William M. Meredith, president of the Select Council, stating the facts and renewing his demand. Two days later the *Public Ledger* published the letter, and on the 7th an editorial commending Mr. Binney's course. He wrote to the *Ledger* to correct a few misstatements in the editorial, and soon after wrote a pamphlet, stating plainly all that had occurred. On the 16th, however, before the pamphlet issued from the press, the Councils adopted the following resolution:



## 1839-40] PAYMENT OF CITY LOAN

*Resolved*, That the holders of the loans made payable on 1st January, 1840, who do not wish to receive them, shall be entitled to six per cent. interest thereon, payable semi-annually, the Councils reserving the right to pay the same at any time, on giving the holder thereof one month's notice.

This was, of course, all that Mr. Binney desired, but his success in inducing the Councils to abandon their scheme of payment was even less remarkable than the effect upon the city's credit, utterly disproving the complaint that any refusal to accept depreciated bank-notes was an attack upon credit generally. What the effect actually was was stated in the *Ledger* of January 29, as follows:

On the 26th December, before any question as to the payment of its loans was publicly agitated, 92 is the best bid for the city's 5 per cent. of 1851.

On the 2nd January it was understood that a gentleman, who was a creditor of the city to a large amount, and who enjoyed unusual weight of private character, had declined receiving bank-notes in payment of his debt, and on that day 93½ is *given* for a loan which had five years *less* to run than that for which, with 2½ per cent. interest on, only 92 had been bid but eight days before.

By the 11th Mr. Binney's letters had appeared in nearly all the papers; the rights of a creditor had familiarized themselves a little to the public mind, and on that day 97 is bid for the 5 per cent. of 1850, an advance in eight days of 3½ per cent. upon a former advance.

About the 17th the papers contained the resolution of the Committee on Finance; the city admitted that those who did not like notes need not take them; and on the 20th the city 5 per cent. of 1846 are sold at 99.

On the 23rd the report of the Finance Committee had been published. The error of the city (though defended) could not be

denied. A precedent is established in favour of its creditors' rights, and its 5 per cent. of 1846 is *sold at par*. . . .

The advance is not upon the loan of 1840, already due, or the rise might be put to the account of specie premium. It is on loans redeemable in 1846, 1850, and 1870; too far ahead to speculate on suspension and the premium on specie.

The advance may properly be attributed to the grave lesson which has been given upon the *unchanging obligation of general faith*; of faith in offering to perform *exactly* what is undertaken to be performed. This is cause enough for even this effect; for faith works miracles in finance as well as in religion.

If the city be ever forced to ask another loan, it will reap the fruits of the services of Horace Binney. Will it wait till then to acknowledge them?

The general tone of Mr. Binney's pamphlet may be gathered from these concluding paragraphs:

I shall here close these remarks, which nothing but the excited state of feeling prevalent in this city would have induced me to make. After this shall have abated, and whether it shall abate or not, I hope to be permitted to pursue my own lawful ends by lawful means. My friends and myself have a large interest in the city debt, running more years into futurity than my life will last. We have paid both full and hard value for it, and I know of no better use to which some of my remaining time can be applied than in preventing the city from redeeming this debt by value that is neither full nor hard. I will, if possible, disturb the concerns of nobody else; and if to set the precedent in the right way will give me some trouble, it will be of all the more value to those who come after me.

. . . I was well aware that nothing could be done by the Councils in my personal behalf that must not be done for every creditor in the same situation. Though I offered privately and in my own name to continue the loan, I knew I was offering for all other creditors, if they should choose to do likewise; and the trouble I have taken and the responsibility I have assumed are for them and the

public as much as for myself. I would willingly sacrifice the sum in question, and I hope more if necessary, for the good of the city; and this is small civic virtue too, for her good is mine; but I should be false to my affection for her people, to my pride in her name and institutions, and to my filial regard for her very soil, the birthplace of myself and my children, if I should sacrifice either this, or anything, to her injury.

I have not looked for popular favour in what I have been doing, nor have I done it in fear of the reverse. I have acted with other motives and to other ends. Popular favour is, without doubt, worth having, as a means of doing good, when it is a reflection from the clear and warm sunshine of a man's own breast. Except when the light of the public countenance is made refreshing from this internal source or support of it, it is of no value at all. At best this light is of transient and precarious use, cold even when it is brightest, often and on a sudden overcast, waning by a law of its own nature to a mere thread at last; and all this perhaps without the least change whatever in the observer. I desire the guidance of a more steady and enduring light.

On the part of the United States Bank and its friends both in and out of Councils the opposition to Mr. Binney's demand was very bitter. They tried, and fully expected, to break him down, but he had aroused against them a public opinion which was too strong to be overcome. He fully realized the seriousness of the situation, and that in case of failure his self-respect would probably compel him to leave Philadelphia altogether; but having made up his mind, he was perfectly indifferent to the consequences, and went through the whole affair as calmly as if it had been purely a professional matter. It was said by many that no other man in Philadelphia could have won such a victory over the city government and the banks, or would even have attempted it. In a letter of February 7, 1840, to Judge White, Mr. Binney reviewed the affair as follows:

Your kind letter was welcome to me, as all that I receive from you are. It was worth a great deal more than the "Remarks" which were the occasion of it, and which have no claim to what you say of them, except from their sincerity. I had no expectation of being carried further than my letter to the Councils, until a few days after its publication as part of the proceedings of those bodies; but finding that the Whig papers were nervously afraid of the subject, so much so as to reject even animadversions upon the act, and that I was getting great praise from some sources from which it is quite suspicious to receive it, I determined to tell my own story. As I have told my brother Sargent,<sup>2</sup> the only credit I deserve for it I shall not get,—namely, that I wrote it in a rage and was able to cut off the communication between my liver, which I take to be the seat of our bitter feelings, and my pen. I meant to write it, however, in a spirit of self-collected defiance, and my friends tell me *that* is plain enough. It has had the rare effect of bringing all, as far as I can discover, to one mind with me, and perhaps the best evidence of it is in the immediate impression it made upon the city debt by raising the 5 per cents. to par after they had stood, as you may perceive by the pamphlet, at about 90 per cent., deducting the interest then accruing. I have answered the use of a post on a wharf, to show the people who were going down the stream faster than they wished where they might make fast; and, indeed, I do not know any better service that a man can render to the community than by thus posting himself; there are so few that are satisfied to render so humble a service. I ought, perhaps, to say further that I gave it to be understood through the town, and modestly (I think) intimated it in the *National Gazette*, that I would follow in the discussion of the subject whenever any respectable *name* would lead me, and at first hoped some one would accept my challenge, for I had some saucy things to say if occasion should be publicly given. But I am now satisfied that no one (with a name) came into the lists. All excitement having been immediately suppressed, the matter has had an opportunity of settling into men's minds, instead of being thrown off from the surface, as party spasm

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<sup>2</sup> Lucius M. Sargent, Esq., of Boston, who had married Mr. Binney's younger sister.

always throws it, however good or true; and therefore I may hope that good has been done.

On the death of Judge Hopkinson, of the United States District Court, in January, 1842, President Tyler appointed Mr. Binney to the vacant judgeship, and the Senate at once confirmed the appointment. The President then wrote to ask his acceptance of the position, stating that the course he had pursued in nominating Mr. Binney without previously asking his consent was the only one consistent with the latter's character. Mr. Webster, then Secretary of State, when sending the commission, also wrote to express the satisfaction of the whole Cabinet at the appointment, and his personal wish that it should be accepted. The position of District Judge for the Eastern District of Pennsylvania is undoubtedly an honourable one, but it offered few attractions to a man of sixty-two, whose position at the bar was such that his appointment to the Supreme Court of the United States had been urged twelve years before and who had for six years voluntarily withdrawn from court practice. Some of Mr. Binney's friends urged him to accept, on the ground that this appointment would necessarily lead to a higher one in the future, but this argument did not appeal to him in the least. He would not have accepted any judicial office whatever unless it had been manifestly his duty to do so, and in this instance there was no question of any duty whatever. The commission was accordingly declined.

Since his return from Europe in 1837 Mr. Binney had never appeared in court, and he had no intention of doing so again; but in 1843 he was called upon to make the last and most important argument of his whole career, the request being made under circumstances which appealed so strongly to his sense of civic duty that he could not refuse.

Stephen Girard, born at Bordeaux in 1750, a cabin-boy at fourteen and a merchant captain at twenty-three, had settled in Philadelphia in 1777 and engaged in trade. A man of great industry, energy, and shrewdness, he was remarkably successful. In 1812, the government refusing to recharter the United States Bank, he bought its building and started a banking-house there himself, though still continuing in business as a merchant. He died on December 6, 1831, a childless widower, with the largest fortune that any one man had ever yet made in America. By his will he gave to his relatives over two hundred thousand dollars, besides making a number of bequests for charitable purposes and public improvements, but he left the bulk of his property (worth at that time about seven million dollars, and ultimately even more) to the city of Philadelphia, in trust to establish and maintain a college for poor white male orphans, between the ages of six and eighteen. The provisions for the erection and management of the college were very detailed, and one of them became the subject of much discussion. Being more or less a follower of Voltaire, and having the characteristic French passion for carrying out an idea which he approved to what appeared to be its logical results, without much regard for the consequences, Girard had thought it necessary, in view of the unfortunate multiplicity of religious sects, "to keep the tender minds of the orphans free from the excitement which clashing doctrines and sectarian controversy are so apt to produce," and to this end he provided that the scholars should be taught "the purest principles of morality," but that "no ecclesiastic, missionary, or minister of any sect whatsoever" should ever set foot, even as a visitor, within the college grounds, which were to be surrounded by a high stone wall.

The gratitude of Girard's relatives for their respective

legacies did not equal their disappointment at not receiving more, and in 1836 they filed a bill in the United States Circuit Court to have the trust declared void, on the ground that the city could not hold a trust, and that the objects of the charity were too vague and indefinite to be capable of execution. Subsequently they also attacked the exclusion of ecclesiastics, urging that the college would become a means of propagating infidelity, and that in consequence the trust was *contra bonos mores*. The case came on for hearing at April Sessions, 1841, but the complainants' counsel made no argument, and the bill was dismissed and an appeal taken. This was first argued in the Supreme Court in 1843, by Mr. Stump, who was one of the complainants, and Mr. Walter Jones, of Washington, the city being represented by Mr. Sergeant. Three of the judges being absent (among them Judge Story, a recognized authority on equity), a reargument before a fuller court was ordered for the next term. It was currently rumoured that the six judges who sat were equally divided, but the mere fact that a reargument had been ordered showed that neither side could count on an easy victory. Accordingly the complainants retained Daniel Webster,<sup>3</sup> whose eminence was scarcely less at the bar than in the Senate, and to meet this move the city turned to Mr. Binney.

Up to this time the city authorities had apparently not contemplated the possibility of defeat, and having been in possession of the property for several years, they had gone ahead and spent a great deal of it in the erection of buildings.<sup>4</sup> To be called upon to account to the heirs would have

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<sup>3</sup> Webster had recently resigned the Secretaryship of State.

<sup>4</sup> The corner-stone of the college had been laid on July 4, 1833, but the buildings were not completed until November 23, 1847. The college was formally opened on January 1, 1848.

been a very serious matter. Hence when Mr. Thomas P. Cope, who was one of Girard's executors and a leading member of Councils, called on Mr. Binney to request his services at the reargument, he said that it was not an ordinary case, that it involved most deeply the interests of the whole city, and that Mr. Binney's friends were all agreed that he was not at liberty to refuse, as they thought the argument a duty which he owed to the city where he had passed his life and where he had always received the highest evidences of professional confidence and respect.

Mr. Binney replied that he had retired from the courts seven years before, and was fully and agreeably occupied in giving professional opinions; that he had repeatedly declined to attend court, and had not contemplated ever delivering another argument. However, on Mr. Cope's insistence, he finally agreed to consider the matter.

On inquiry he learned that Mr. Sergeant's argument had been made in reliance mainly on Pennsylvania decisions, and that it was now thought necessary to investigate the fundamental principles of charitable trusts, so as to put the case on the strongest possible ground. The reargument was to be in no sense a repetition of the former one. This, of course, made it possible for a new counsel to present his own argument without interfering with the line taken by Mr. Sergeant, but Mr. Binney was explicit from the start in making his acceptance conditional on Mr. Sergeant's remaining in the case if his health permitted. He was the more explicit because he learned that an influential member of the Councils wished to exclude Mr. Sergeant from the argument, and to substitute Mr. William M. Meredith. "When Mr. Cope called again," wrote Mr. Binney, "I told him . . . I would on no account, as an old friend, prevent or be the means of preventing Mr. Sergeant's arguing it again. If



my services were deemed of importance to the city, they must be sufficiently so to authorize me to annex this condition to them, on account of my personal relations with him, which I did not mean to put to so great a hazard as they would be by my consenting to take his place in the argument. . . . So accordingly it was arranged and understood explicitly by Mr. Cope for the Councils, by Mr. Meredith, and by myself; and with this *entendu* I agreed to take part in the cause, and accepted the retainer of the city.

"In the course of my preparation . . . I conversed on some points more than once with Mr. Sergeant, about as much as was our practice in cases in our own courts, where he uniformly left me to prepare the whole argument, if I was to open, as I generally did, he being three months my senior at the bar, and as I thought it indispensable to do in this case. I believe he left the matter to me with perfect confidence, and probably did not look much into it, if at all, himself."

Although the court had not indicated any particular points as to which reargument was specially desired, it was not difficult to see what it was that had disposed some of the judges, at least, to favour the complainants' side. The name of Marshall, as it always will and always should, carried great weight with the court, and his opinion in *Baptist Association vs. Hart's Executors*,<sup>5</sup> delivered in 1819, as well as the concurring opinion of Story,<sup>6</sup> undoubtedly gave colour to the contention that a trust like Girard's, for the benefit of poor white male orphans of a certain age, a class of persons no one of whom could assert a legal right to be a beneficiary, could not be upheld in the United States. That case decided that a devise to an unincorporated society, in trust "for the education of youths of the Baptist denomination, who shall appear

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<sup>5</sup> 4 Wheat., 1.

<sup>6</sup> Printed in 3 Pet., 481.

promising for the ministry," with a preference for the descendants of a certain family, was invalid in Virginia; not merely because the society, being unincorporated, could not itself hold property, but also because the trust was too vague to be claimed by those for whom the beneficial interest was intended.

In the Girard case, it is true, the trustee was a municipal corporation, but if Marshall's doctrine as to gifts for vague and uncertain objects was to be broadly applied, it would be fatal to the trust, and it had been so applied in Maryland and Virginia. It was therefore necessary to show conclusively that the decision in the Baptist Association case was founded upon an erroneous idea of the law of charitable trusts as it had existed in early days, before the statute of 43d Elizabeth, and accordingly Mr. Binney set himself to study the legal history of charitable trusts as it had never been studied before in this country, and possibly even in England. His researches disclosed the fact that charitable trusts for uncertain beneficiaries had been well known at common law and repeatedly upheld before the statute of Elizabeth, which had been enacted merely "to redress the misemployment of lands, goods, and stocks of money heretofore given to certain charitable uses," such misemployment having followed the dissolution of the religious orders, who had been the great trustees for charitable uses throughout the kingdom.

It does not disparage the learning of Marshall and Story to say that in 1819, when they decided the Baptist Association case, they did not have that knowledge of the law of charitable trusts which Mr. Binney acquired in 1843. The duty of investigation is primarily that of the counsel and not of the court, but, besides, he had access to authorities some of which could probably not have been found in America in 1819, while others were then not even in print. The "Cal-

endars of the Proceedings in Chancery," covering the reign of Queen Elizabeth and several of her predecessors, were not published until 1827, and from these Mr. Binney gleaned more than fifty instances of an exercise of chancery jurisdiction which Marshall had positively stated there was no trace of whatever. Moreover, the subject had been studied in England since 1819, and Mr. Binney was able to cite the conclusions of eminent jurists there in confirmation of his own.

Mr. Binney's copies of the volumes in which the opinions in the Baptist Association case are found contain some interesting traces of his work in preparing for the Girard argument. His pencilled notes, written after he had completed his researches, point out again and again the erroneous views of Marshall and Story in regard to the law as it stood before the 43d Elizabeth. It is clear, too, that he thought Marshall's view much too narrow, even after making all due allowance for the conditions under which the opinion was written, for the final note is this: "The great defect of this case is that the mind of the chief justice is not applied to the subject upon grounds and principles of general equity, but it is a search after the *fact* whether chancery, before 43d Elizabeth, can be shown to have exercised the power of enforcing trusts for charities that could not be directly enforced at law. This was altogether an unworthy research for such a man."

In December Mr. Justice Thompson died. It was generally understood that he had been in favour of upholding the trust. At all events his death made it possible that the court might divide evenly on the reargument, and while this would have sustained the will, it would not have settled the principle for which Mr. Binney was contending. If he had needed any further stimulus to strive for a victory of the most decisive character, the bare possibility of a divided court may

well have furnished it. As it turned out, however, Chief Justice Taney was too unwell to sit, and the case was ultimately heard by seven judges only, Mr. Justice Story presiding.

Mr. Binney reached Washington on January 10, 1844, but returned after a few days, as Judge Story's absence delayed the argument. Again on the 26th there was further delay, and the hearing did not begin until a week later. While confident in the strength of his argument, Mr. Binney lost no chance of further perfecting it if possible, and during the enforced delay he wrote more than once to his son to procure authorities to which he had not yet had access. Still, though striving to turn the delay to some advantage, he found it irksome enough, and the very cold weather did not tend to improve matters. On the 27th he wrote: "My cold continues and is to wear off with a cough. I want my voice as much as old Jenkins said he did when he expected to speak at his hanging."

On February 2 Mr. Jones opened, taking substantially the same view of a charitable trust that had been taken in the Baptist Association case, and attacking also this particular trust on account of the exclusion clause. On the 5th Mr. Binney proceeded to lay before the court the fruits of his exhaustive study of the case. He first showed that Girard had been far from illiberal to his relatives, and that, in consequence of the residuary clauses of the will, they could gain nothing by a judgment adverse to the trust. "The complainants' whole argument against the charity is," he said, "suicidal. The only effect of it, beyond their own destruction, is to give [the property] to the city, for her appropriate municipal uses, and to defeat, without the slightest benefit to themselves, the noble charity that their kinsman has instituted for the poor."

Turning to a consideration of the trust itself, Mr. Binney called attention to the fact that the attack upon Girard's will was an attack upon all charitable trusts in the United States. He said,—

This great question, involving the largest pecuniary amount that has perhaps ever depended upon a single judicial decision, and affecting some of the most widely diffused and precious interests, religious, literary, and charitable, of all our communities, is now to be brought to the test of legal researches and reasoning. . . . If we look to [the complainants' bill] for such discriminations between charitable uses as will leave the public in the enjoyment of some and deprive them only of others, we find nothing of the kind. It would have been some relief to ascertain, if those in the testator's will were thought to be defective, that by adding or subtracting some particular characteristics, we might, with the complainants' consent, fall upon at least one class of charities that has enough of suspended animation to be resuscitated by a court of equity. But the complainants leave no such hope or expectation to the public. They give us no principle or rule by which we can discover that in their judgment there are any redeeming characteristics of a good charitable use. They allege as fatal defects in the uses declared by Mr. Girard properties that are not only common to all charities, but are inseparable from their very nature. They treat the whole institution of charities as an irremissible offence against the laws of property, whether legal or equitable, except so far, and only so far, as the Legislature may have made a special enactment for the case.

To meet an attack of so fundamental a character, an almost elementary investigation of this branch of the law was needed. In answering the objection that the Girard trust was void because the beneficiaries were not certain, Mr. Binney was not content with showing that a trust for the support and education of poor white male orphans of a certain age was neither vague nor indefinite, but he went on to

completely turn the tables upon his antagonists, proving conclusively that uncertainty as to the beneficiaries, so far from detracting from a charitable trust, was an essential feature of it. In developing this part of his argument he first called attention to a number of instances of charitable trusts for uncertain objects, and of the vesting of interests in the beneficiaries, and went on to say,—

The argument of the complainants demands for all charities that certainty and definiteness which are the badges of private right; and it probably will not be surrendered until, by rising up to the source of charity, it is shown that certainty in their sense is its bane, that uncertainty, in the sense of the law of charities, is its daily bread, and that the greatest of all solecisms in law, morals, or religion is to talk of charity to individuals personally known to and selected by the giver. There is not, there never was, and there never can be such a thing as charity to the known, except as “unknown.” Uncertainty of person, until appointment or selection, is, in the case of a charitable trust for distribution, a never-failing attendant.

He then proceeded to rise “up to the source of charity,” saying,—

It has been said that the law of England derived the doctrine of charitable uses from the Roman civil law. . . . It is by no means clear. It may very well be doubted. It is not worth the time necessary for the investigation. . . . But where did the Roman law get them? . . . They come from that religion to which Constantine was converted, which Valentinian persecuted, and which Justinian more completely established; and from the same religion they would have come to England, and to these States, though the Pandects had still slumbered at Amalfi, or Rome had remained forever trodden down by the barbarians of Scythia and Germany. I say the legal doctrine of pious uses comes from the Bible. I do not say that the principle and duty of charity are not derived from natural religion also. Indi-

viduals may have taken it from this source. The law has taken it in all cases from the revealed will of God.

What is a charitable or pious gift, according to that religion? It is whatever is given for the love of God, or for the love of your neighbour, in the catholic and universal sense,—given for these motives, and to these ends,—free from the stain or taint of every consideration that is personal, private, or selfish.

Viewed as a definition, this statement has been criticised as more religious than practical. It is, however, a description of a charitable gift “according to the Christian religion,” from the stand-point of “the source of charity,”—a description, in other words, of the ideal charitable gift, rather than a definition to which all gifts which are to be upheld as charitable must conform. The complainants had contended that the law would not uphold a trust in favour of indefinite, unknown persons, and Mr. Binney was undertaking to show that the most perfect charitable gift was that where the beneficiaries were least known to the benefactor. It is a mistake to suppose that this description of the ideal charitable gift was intended as a definition. It relates to motives and considerations which may be inferred, but can never be proved to exist. All that can be said of any gift is that the more nearly it approaches this ideal, the more truly a charity it is.

The argument continued with a discussion of charity from the religious stand-point, a discussion thoroughly spiritual in its tone. Realizing that some explanation might be needed for thus trenching on what might be thought the province of the preacher rather than the lawyer, he said,—

It has been by no means my intention in these remarks to pronounce a homily to the court or to the counsel. It is not without some repugnance that I have blended themes of this nature with questions

of law, in a strife for the recovery and defence of property. But they bear directly upon questions of law, and especially upon the great question which I am now to discuss; for they disclose the foundation of charitable uses and one of their inseparable attributes, in a manner most effectual to answer not only the main argument of the complainants' counsel, but the judicial arguments which, in one or two cases in our own country, have unfortunately been used to defeat them.

After disposing of the legal objections which had been urged against the trust, Mr. Binney proceeded to establish its validity, demonstrating, by reference to group after group of unassailable authorities, the successive propositions that the trust was good by the common law of England, which was the common law of Pennsylvania; that the city, being in complete possession, was not seeking the aid of a court of equity; that the trust was, however, entitled to the protection of such a court upon general principles of equity jurisdiction; that such trusts always had been protected in Chancery by its original jurisdiction; that the statute of 43d Elizabeth only supplied an ancillary remedy, long since disused; and that the great body of the equity code of England had been adopted in Pennsylvania from the first, as well as in several other States. In short, he placed the Girard trust upon absolutely impregnable ground.

In the discussion of his first proposition Mr. Binney took up the objection that Girard had sought to found an anti-Christian charity. He pointed out that there was no prohibition of religious teaching, but only an exclusion of ecclesiastics, and that expressly because of the multiplicity of sects, the will disclaiming most positively all intention to cast any reflection upon any sect whatever; while, on the other hand, the provision for instruction in "the purest principles of morality," and the references to "the sacred rights of



conscience," and to the adoption of "religious tenets" by the scholars on leaving the college, showed that Girard contemplated that the scholars should be qualified by Christian teaching in the college, to become, after leaving its walls, intelligent and conscientious members of Christian bodies. He said,—

Whoever reads this will by *its own* light only, and this is all that the court have to guide them, must therefore see that there is nothing in it like an interdiction of instruction in the principles of the Christian religion; and I contend for this the more strenuously because the trust, I confidently believe, must be executed, and I should deprecate it as a great public evil, as well as a perversion of the will, to have a doubt remain of either the right or the duty of the trustees to give religious instruction.

In this connection Mr. Binney went on to state that there was no law requiring Christianity to be taught in schools by Christian ministers, that a great deal of religious instruction was given by laymen, as in the case of Sunday-schools, and that there was nothing in the will to prevent the erection of an infirmary outside the walls for the use of the scholars in time of illness, to which building, if so placed, the exclusion would not apply. He added the pertinent suggestion:

If this exclusion or restriction in the testator's will is illegal, it is for that reason null and absolutely void, and the consequence is not that the charity fails, but that the restraint—the condition—is defeated, and the court must establish the charity according to their sense of the law. It is a condition subsequent to the gift. The estate has vested in the trustees, and this restraint or condition is a restraint upon its use. If the restraint is illegal, the use is not bound by it. The complainants gain nothing by the objection but the unenviable

satisfaction of holding up their benefactor to judicial censure, and possibly to more general reprehension.<sup>7</sup>

Mr. Sergeant followed with a general review of the grounds of defence presented by Mr. Binney, and Webster then replied in a three days' speech, directed mainly against the exclusion of the clergy from the college. He contended that the trust was designed to foster atheistic, or what would now be called agnostic, education, and hence was not really a charity at all in any view that a court of equity would uphold. This part of his argument was thought so strong a plea for the necessity of a religious education that it was afterwards published as a pamphlet,<sup>8</sup> on the request of a number of clergymen and others; but as the exclusion clause was, as Mr. Binney had pointed out, in no sense essential to the maintenance of the trust, the argument was, for the purpose for which Webster was retained, less pertinent than ingenious. The impression which it made on Judge Story was as being "altogether an address to the prejudices of the clergy."<sup>9</sup> Though Webster's views as to the anti-Christian purpose and effect of Girard's trust were opposed at every point to Mr. Binney's, he paid high tribute to the latter's argument, saying,—

I never, in the course of my whole life, listened to anything with more sincere delight than to the remarks of my learned friend who opened this cause,<sup>10</sup> on the nature and character of true charity. I agree with every word he said on that subject. I almost envy him his power of expressing so happily what his mind conceives so clearly

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<sup>7</sup> It may perhaps be thought unfortunate that the court did not find it necessary to settle the question in the way suggested, and, by holding the exclusion clause to be void, allow the clergy access to the college.

<sup>8</sup> It is published in Webster's Works, vol. vi. p. 133.

<sup>9</sup> Story's Life and Letters, vol. ii. p. 469.

<sup>10</sup> The words, "for the defence," should have been added.

and correctly. He is right when he speaks of it as an emanation from the Christian religion. He is right when he says that it has its origin in the word of God. He is right when he says that it was unknown throughout all the world till the first dawn of Christianity. He is right, pre-eminently right, in all this, as he was pre-eminently happy in his power of clothing his thoughts and feelings in appropriate forms of speech.

It is needless to say, however, that Webster cleverly turned this tribute to Mr. Binney into an argument against the latter's view of the practical effect of the exclusion clause.

Judge Story, writing to his wife at the close of Webster's first day, gives an interesting partial glimpse of his own impression at the time.

In the case of the Girard will, the arguments have been contested with increasing public interest, and Mr. Sergeant and Mr. Binney concluded their arguments yesterday. A vast concourse of ladies and gentlemen attended with unabated zeal and earnest curiosity through their speeches, which occupied four days. Mr. Webster began his reply to them to-day, and the court-room was crowded almost to suffocation with ladies and gentlemen to hear him. Even the space behind the judges, close home to their chairs, presented a dense mass of listeners. He will conclude on Monday. The curious part of the case is that the whole discussion has assumed a semi-theological character. . . . I was not a little amused with the manner in which on each side the language of the Scriptures and the doctrines of Christianity were brought in to point the argument; and to find the court engaged in hearing homilies of the faith and expositions of Christianity with almost the formality of lectures from the pulpit.<sup>11</sup>

The argument ended on February 13, and a fortnight later Judge Story delivered the opinion. Though he had written a concurring opinion in the Baptist Association case,

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<sup>11</sup> Story's Life and Letters, vol. ii. p. 467.

his mind was thoroughly open to any new light that might be shed upon the subject. In fact he called Mr. Binney's attention to a recent decision of Lord Chancellor Sugden,<sup>12</sup> which he had not seen, and which he admitted would have aided his preparation of the case if he had known of it before, as it had involved to some extent the same line of research.

Judge Story distinguished the case from that of the Baptist Association, and admitted that the court had more information on the history of charitable uses than it had had in 1819. His opinion is clear and concise, and wholly along the lines of Mr. Binney's argument. A letter of Story's to Chancellor Kent, written six months later, says, "I rejoice to know your opinion on the Girard case. The court were unanimous, and not a single sentence was altered by my brothers as I originally drew it. I confess that I never doubted on the point, but it is a great comfort to have your judgment—free, independent, learned—on it."<sup>13</sup>

Before the Girard will argument Mr. Binney's standing as a lawyer was certainly second to none in Pennsylvania, and a New York newspaper writer had referred to him in 1841 as "second to no man in the United States." Still, though known outside of his own State, both as a lawyer and by his short career in Congress, it could hardly be said that he was a man of great national reputation. He had made seven other arguments before the Supreme Court, losing only one of them, but none of these approached the Girard case, either in the amount involved or in fundamental legal importance. It may well be that Mr. Sergeant's original argument was really sufficient to win the case as far as upholding this par-

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<sup>12</sup> *Incorporated Society vs. Richards*, 1 Dru. and War., 258. There was a copy in the Harvard Law Library, but none in Philadelphia or Washington, apparently.

<sup>13</sup> Story's *Life and Letters*, vol. ii. p. 467.

ticular trust was concerned, but it was universally recognized that the establishment of charitable trusts in general upon an unassailable legal basis in the United States was Mr. Binney's work, both in the research which preceded the argument and in the argument itself, which was practically an epitome of the whole law upon this subject. Without making any invidious distinctions it is not too much to say that from this time on he was regarded, throughout the whole country, as one of the very foremost of all American lawyers. By many he was even thought to be the head of the whole bar in the United States,<sup>14</sup> but he always laughed at such a suggestion himself. This, however, is certain, that as long as the law of charitable trusts shall exist as a part of American jurisprudence, his name will be inseparably connected with it.

Two incidents connected with this argument remain to be noticed. There was, as already mentioned, a vacancy on the Supreme Bench at this time, and Mr. Henry A. Wise has stated, in his "Seven Decades of the Union," that the appointment was offered to Mr. Sergeant, and on his declining, the same offer was made to Mr. Binney, on Mr. Sergeant's suggestion. As to the interview with Mr. Sergeant, Mr. Wise's book is the only authority, but Mr. Binney has recorded what took place as regards himself, in an account written more than twenty years before that of Mr. Wise, and therefore presumably, more accurate.

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<sup>14</sup> In a pamphlet on "Personal Liberty and Martial Law," published in April, 1862, strenuously attacking Mr. Binney's view of the suspension of the privilege of habeas corpus, the late Mr. Edward Ingersoll, with characteristic courtesy, quoted Earl Russell as having publicly referred to Mr. Binney as "the head of the bar in America," and endorsed the statement as true. Presumably Mr. Ingersoll copied an incorrect newspaper despatch, for Earl Russell's words in the House of Lords, as officially reported, were, "a gentleman at the head of the bar in Philadelphia." (See Hansard, 3d ser., vol. clxiv. p. 106.)

“ After I had finished my argument, which kept me on my feet, I am sorry to say, nearly three mornings, a personal friend of President Tyler, holding a public station, and who afterwards received a high appointment from him, visited me at my chamber at Gadsby’s. . . .

“ After referring to my argument, which this gentleman spoke of in terms it does not become me to repeat, he was so obliging as to say that he with many others desired to see me on the bench of that court, and he expressed in urgent terms a desire that I would permit him to mention my name to Mr. Tyler for the appointment. His intimacy with Mr. Tyler was quite sufficient to justify the inference that he had already spoken of it to the President; but he did not say so, and I have no reason for inferring it but this intimacy, the absence of intimacy with myself, and the probability that he would not have asked my consent without having some reason to think that he would not bring me a disappointment by obtaining it.

“ Without in any way advertg to its being the New York circuit that was vacant, and therefore that the bar of that State would naturally and most justly look for a gentleman of their own State, I distinctly but respectfully declined the proposal. I told him, moreover, that I had now attained the age of sixty-four; that I knew what I had done at the bar, but did not know what I could do on the bench; that I had no time to learn a good judicial habit and manner, if it should be found that I wanted them at the outset; and that there were other circumstances in my case and in that of the court which it was unnecessary to mention, but that upon full consideration I had determined not to accept any judicial station whatever.

“ Whether the gentleman repeated this to the President I do not know, but upon Judge Baldwin’s death, a few

months afterwards, the commission was not offered to me; and if it had been, I should certainly have refused it."

Mr. Wise's book shows that he was the "personal friend of President Tyler" who visited Mr. Binney, but he did not write until after 1868, and his reference to the argument contains several inaccuracies.<sup>15</sup> Of the interviews he wrote:

The evening after Mr. Binney had concluded this great argument, in January (*sic*), 1844, Mr. Sergeant was visited by us<sup>16</sup> at his hotel to deliver the message of Mr. Tyler. Mr. Binney was in the next room. Mr. Sergeant received the compliment with graciousness and evident pleasure; but he did not hesitate to decline the tender of a place on the Supreme Bench. Before he assigned his reason he enjoined secrecy during his life, and especially it was not to be disclosed to Mr. Binney. It was that he was past sixty years of age, and that he ought not to accept, but he regarded Mr. Binney as being much more robust than himself, considered that Mr. Binney might accept, and did not wish him to know that he had declined because he considered himself too old, and requested that the President would make the tender of the place to him. It was tendered to Mr. Binney at once, and, behold, he declined it for the same reason, but begged that Mr. Sergeant should not be informed of his reason, and that the place might be tendered to him.

Neither, we believe, ever knew the reason of the other for declining.

Mr. Binney said that he had once, in the vigour of his manhood, aspired to judicial position,—to a seat on the Supreme Bench of Pennsylvania; but Mr. Justice Gibson, of that State, had been preferred to him, and that cured his ambition, and he had never since aspired to the bench.<sup>17</sup>

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<sup>15</sup> *E.g.*, that Judge Baldwin's seat was vacant, whereas it was Judge Thompson's; that Mr. Binney had gone to England to confer with Lord Campbell and secure unpublished Chancery records in regard to charities; and that Mr. Sergeant's argument preceded Mr. Binney's.

<sup>16</sup> Mr. Wise always used the editorial "we."

<sup>17</sup> *Seven Decades of the Union*, p. 219.

The similarity between the two replies to the offer can scarcely have been quite as complete as Mr. Wise states. Mr. Binney does not say that he suggested Mr. Sergeant's name, and the fact that he thought the appointment should be from New York makes it unlikely that he did so. That he should have confessed to having once "aspired to judicial position," and to having had his "ambition" cured by disappointment, is even more unlikely. Mr. Binney's aspirations and ambitions, unlike Mr. Wise's, were not towards public life of any kind. The most that he was likely to have said was that if he had ever aspired to judicial position, the fact that the request of the bar in his behalf, in 1827, had been denied would have sufficed to cure such an ambition. What is more likely, however, because it would have been characteristic of both men, is that Mr. Binney merely stated the occurrences of 1827 without comment, and that Mr. Wise inferred that there must have been both aspiration and disappointment.

Among those who listened to Mr. Binney's argument was General Zachary Taylor, afterwards President. What he thought of it appears from a letter of Mr. Binney's written in 1873 to a friend who had been reading the argument.

The argument on my part is truly presented, but I have been often told it was better delivered. It may be so, or not so. Upon the strength of having heard it, I really believe that General Taylor wished to make me his Secretary of State, as I was informed semi-officially, which I think was the most foolish thing I ever heard of him, unless perhaps it was his excess in eating cherries and ice-cream, which killed him. But he was a very honest man, though perhaps no better judge of civilians than General Grant is said to be.

Under ordinary circumstances the thanks of the City Councils would have been formally given to its successful



defenders, but the same influence which had sought to exclude Mr. Sergeant from the case prevented any expression of thanks to him, and no distinction could be made. The trustees of the Girard Estate gave their thanks, however, and had the argument printed in full for permanent preservation. The following letter states one of the motives for the printing:

*(To the Hon. D. A. White.)*

BURLINGTON, Aug. 26, 1844.

I was very happy to see your handwriting once more, and to read your kind letter. The argument was not printed for use in your quarter, because your State courts are, and always have been, right on this head, and so I am certain Judge Story would have been but for a little too much deference to Chief Justice Marshall, a great constitutional lawyer and a truly great man, but not equal in all branches of the law.<sup>18</sup> The "barbarous people" in Virginia shew no kindness to charities, especially religious charities, and Maryland has the same temper in her courts, though her people have a much better one. The hope of the friends who suggested the printing was to do some good in those quarters, and in the South generally, where it has not yet been sufficiently considered how much the virtue and dignity of a State depend on protecting charities for religion and letters, as well as those for the relief of the poor and sick. I hope they will all come to think more and better of the matter. If I have the suffrages of the ladies, it is a great deal more than I looked for. A female friend, who does me the favour to read anything she sees my name to, told me, after trying a few pages, that she found I could write as unintelligibly as other people, when it suited my purpose.

I had half a mind, when I saw that you were to discourse to the alumni, to start right off with the wind and catch a part; but you must know that swiftly and happily as I may travel to the borders of Massachusetts, yet as soon as I get within, and near my old haunts, the breeze all dies away, and my sails flap languidly against the

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<sup>18</sup> This refers, of course, to Story's opinion in the Baptist Association case.

masts, or hang motionless and dead. Nearly all that I once knew and loved there are gone; and when an exception shews itself in you or Warren and perhaps a few others, it only compels me the more to mark the extent of the vacuity. This is one of the discomforts of revisiting the scenes of our youth in old age, and a very sharp one to me, as I have repeatedly found. The old familiar faces are gone, and there has been no opportunity to acquire an interest in those which have taken their place. Your discourse will be printed, however, and I shall be refreshed by the light of your countenance, without feeling so keenly that my other lights in your neighbourhood have gone out. I count upon your sending me a copy.

## X

ANTI-CATHOLIC RIOTS—PENNSYLVANIA RAILROAD  
CONTROVERSY

1844-1849

**D**URING 1844 occurred the worst riots that Philadelphia has ever known. The Native American party had just started on its brief career, and on May 3 an open-air meeting for local organization was held in the Kensington district. The foreign-born element, mostly Irish, broke up the meeting, and attacked it again when reconvened three days later. Some shots were fired from houses, a youth named Shiffler was killed, and several men wounded. In revenge an attack was made on a Roman Catholic school known as "the nunnery," but this was abandoned after two men had been killed by shots from the building. The next afternoon, May 7, the Native Americans met in the State-House yard, adopted denunciatory resolutions, and marched to Kensington to hoist a flag where Shiffler had fallen. Being fired on from the Hibernia Hose-House, they broke into and burned the building, and did nothing to check the spread of the flames. During the conflagration some of the crowd were killed and others wounded by shots from houses. Finally the militia restored some degree of order, and the fire was put out, but only after about thirty houses had been burned. Most of the troops were withdrawn the next day, whereupon more fires broke out, destroying "the nunnery" and St. Michael's Church and adjoining buildings.

The return of the troops ended the riot in that particular

district, but disturbances broke out in the city itself. While the mayor and police were trying to pacify a mob in front of St. Augustine's Church, on Fourth Street below Vine Street, it was entered, and totally destroyed by fire. Strong guards of troops saved the other Roman Catholic churches, the United States marines being posted at St. Mary's, a few doors from Mr. Binney's house.

At that time the police force was small and inefficiently organized, the city and the districts having each its separate force; while as there was no riot act the local authorities shrank from any effective use of troops, and, in fact, showed no capacity to deal properly with the situation. Mr. Binney, however, presumed that the riot would be speedily suppressed, and although from his door-steps he watched the flames at St. Augustine's, not half a mile away, and his own house was just between two other Roman Catholic churches, he saw no reason for excitement or fear. Great was his surprise, therefore, the next morning, to learn that nothing had been done.

"Upon descending from my early breakfast," he wrote, "I found Peter McCall in my office, who told me that I was desired to come to the Council chamber as soon as possible; and upon my inquiring the reason, he informed me that the city was in great disorder and agitation from the events of last night, and that I was wanted to advise upon the proper measures for the occasion. I replied to him that I would not go, that the men in authority were the men to take the responsibility of the proper measures, and I presumed that they had already done it. There were enough of them, and as they held office it was to be hoped they were fit for it. To this he rejoined that I *must* go, that he had been deputed specially to bring me up, and that nothing had been done; on the contrary, that the authorities had been in session during the night, and instead of doing anything, appeared to be stupefied.

He then gave me the details of the night as he had learned them. The mob had triumphed. The military had been ordered to retire to a neighbouring street to wait for orders, and instead of being called upon to disperse the mob, which they could easily have done, . . . they remained in shame and indignation within two hundred feet, while the civil authorities, from mere apprehension of taking life, had refused to call on them, but stood quietly by to see the church burn down and the mob depart with cheers and menaces of further destruction. . . . Mr. McCall told me that everything depended upon my coming, and that he would not return without me. I asked him to request Mr. Sergeant to be present in the Council chamber, and said I would follow without delay.

"I shall never forget the appearance of the Council chamber when I entered it. There were perhaps five and twenty in the chamber. Mr. Meredith, the president of the Select Council, was there, the Attorney-General, Mr. Josiah Randall, and some others. I never saw a body of more unresolved men. One or two of them had countenances a little below this. They looked as if they were excessively puzzled. I believe there was no formal organization of the meeting, but I started some irregular talk by asking whether any person had anything to suggest or to say in regard to the occasion of the meeting. The Attorney-General and one or two others said a word or two, which looked to getting assistance elsewhere, and to the responsibility of meeting the violence of the mob in the only way effectually. I replied that assistance from other quarters might be very useful, but that if we did not mean to be unworthy of it we must assist ourselves immediately; and that as to the responsibility of resisting a mob in the very degree, however severe and extreme, which their designs and violence made necessary, I had as

little hesitation about encountering it as I had [doubt] of the ability of the citizens with their own hands to make the resistance effectual. It was immediately moved by some one to appoint a committee to prepare resolutions to be submitted to a town meeting, which I then for the first time heard was to meet in the State-House [yard] at ten o'clock, it being now about half-after nine. The committee was appointed, myself as chairman, and we immediately retired to a committee room, two or three of my friends, as I passed along, saying that the meeting would agree to anything I would propose. The resolutions which I drew up were short and plain; they did not ask for any help but from ourselves; they recommended the immediate enrolling of the citizens in each ward under the command of the civil authority of the ward; and they asserted the legal right, for the protection of property and life, to resist and to defeat the mob by the use of any degree of force that was necessary for this purpose.

“The resolutions were adopted at once, *nem. con.*, without a word of discussion or remark, and I was appointed to present them to the public meeting. The assemblage in the Square was large, but extremely quiet, and I spoke ten minutes. The resolutions were read and adopted with hearty cheers, and in a moment the whole expression of the meeting was changed. All looked as if the right thing had been suggested at the right time, and all departed to put the measure at once into execution in the wards. Before the evening of the day arrived the city was safe, at least for that time. The comprehensive declarations of the resolutions, which did not *speak* daggers nor guns, but very plainly *looked* them, led to companies in military uniform, under military command; but in the first instance the young men, in their citizens' dress, became an effective police, guarded the ave-

nues to the Catholic churches, and had the military at their backs to support them in case of need.<sup>1</sup>

The Fourth of July was followed by riots in the district of Southwark. The local authorities having found a few muskets in the church of St. Philip Neri, a mob threatened the building and finally broke into it, besides maltreating the members of an Irish military company, who had been sent to defend it. On the evening of July 6 there was a lively skirmish between the troops and the mob, who had some muskets and two 4-pounder cannon. Men were killed and wounded on both sides, but the mob was ultimately driven back and the cannon captured.

The next day the sheriff put a civil posse in charge of the church, and the troops were withdrawn. The fighting was not renewed, but a very dangerous feeling of sympathy for the rioters who had suffered, and of condemnation of the troops, began to show itself, so that even the arrival of the governor, and of troops from other counties, as well as the promise of regulars, did not suffice to assure the maintenance of order. It was evident that there must be some demonstration of public opinion on the side of the authorities, or the mob might eventually triumph. On the morning of the 10th

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<sup>1</sup>“The Hon. Horace Binney came forward and proposed a series of resolutions, which are subjoined, with some remarks calculated to throw light upon the duty of executive officers and the rights of citizens.

“Mr. Binney deplored the wretched state into which the city and districts had been thrown, and explained the law which has a bearing upon the duty of those who are conservers of the public peace,—the gist of which is, that in attempting to preserve or restore the public peace, the proper officer has a right, and is, therefore, bound to use force proportionate to the force of the disorganizer. In other words, Mr. Binney gave the idea, in which others concurred, that a mob ought to be put down, and the lives and property of citizens made secure to them; and, consequently, those who before had doubts about the right of the civil authority to use proportionate and efficient means to preserve order, became satisfied.” (United States Gazette, May 10, 1844.)

there was a meeting at Evans's Hotel,<sup>2</sup> when it was agreed that the citizens should express to the governor their full and decided approval of the conduct of the military. The committee in charge of the proposed address turned instinctively to Mr. Binney, who drew it up at once, so as to have it immediately printed and circulated for signature. The following passages illustrate the general tone of the paper:

They [the military] are all of them citizens, performing the highest duty that a citizen can be called upon to perform,—the duty of perilling their lives in defence of the laws and the Constitution, which they have voluntarily adopted for their government. . . . In the performance of this duty, which was no more their duty than ours, and in the performance of which they were citizens and only citizens, using the lawful force which unlawful force made necessary, their blood has been shed and the lives of some of them laid down upon the spot which by the command of the civil authority it was their duty to defend. . . .

In offering this individual testimony to the civil officers and uniformed corps of the State, the county, and the city, we declare to your Excellency that we have no other object upon earth than to give confidence to public and private virtue in a crisis which demands them both in the highest degree; and to declare our acknowledgment of the great truth upon which all government, and republican government especially, rests, that obedience, implicit, unhesitating, and unquestioning obedience is due to the law, while it is the law, and that the life and property of every citizen should be freely offered in its support. If any one has done wrong on the side of the law, let peace and order be restored and the law will judge her servants as impartially as she will judge her enemies. In the mean time . . . let confidence be given to the servants of the law until its enemies are suppressed.

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<sup>2</sup> The report of this meeting shows that Mr. Binney's oldest son was one of those most concerned in it.



The address, having been signed by a large number of citizens, was presented to the governor the next day at Independence Hall, and produced an excellent effect. It definitely arrayed all respectable people on the side of order, and no further rioting was attempted.

The fundamental difficulty of the authorities in dealing with the mobs was due to the lack of any statute definitely authorizing the use of whatever degree of force the circumstances required. Very resolute men would not have hesitated to use such force at once, on general legal principles, but such men were not in office in Philadelphia in 1844, and are rarely in public office at any time. To guard against lawless outbreaks in the future, some legislation was clearly required; but opinion was divided as to whether it should be limited to police matters and the prompt suppression of riots, or should involve a complete reorganization of the municipal governments in Philadelphia County. The advocates of consolidation prepared a bill and memorial for submission to the Legislature; while at an anti-consolidation meeting, held on December 28, 1844, Mr. Binney was appointed on a committee to prepare a bill relating to the police and the maintenance of order. Not unnaturally, the actual drafting of the bill was left to him, and it ultimately became law as the Act of April 12, 1845.<sup>3</sup> Those parts of the statute which related to the police were superseded when consolidation was finally effected, nine years later, but the sections in regard to riots are substantially the same to-day as when Mr. Binney drew them. While they provide unequivocally for all measures essential to the preservation of the peace, they are, and were intended by their author to be, a means of preserving life, even the life of rioters, rather than of taking it

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<sup>3</sup> P. L., 380.

away. It is significant that since their enactment nothing that can properly be called a riot has ever occurred in Philadelphia.

During the session of the General Convention of the Episcopal Church in the autumn of 1844, Bishop H. U. Onderdonk, of Pennsylvania, communicated to the House of Bishops his wish to resign the jurisdiction of the diocese, and also submitted himself to the judgment of the House upon a written acknowledgment of excessive use of liquor. He had acquired the habit through resorting to stimulants to enable him to perform his very laborious duties, but while he had stopped their use altogether as soon as he realized the deleterious effects, this was not until his conduct had become the subject of censure, based somewhat on exaggerated reports. Mr. Binney had always esteemed the bishop very highly, and held that he had been imprudent, but perfectly blameless in intention, and that, having resolved to give no cause for scandal in the future, he should be dealt with in a Christian and forbearing spirit, so as to encourage the fulfilment of his resolution. Unfortunately many of the clergy of the diocese took a different view, and the bishop was subjected to a very extraordinary and bitter persecution, while the House of Bishops not merely accepted the resignation of jurisdiction, but imposed the crushing sentence of indefinite suspension from all episcopal functions whatever, and from all public exercise of the priestly office.

Until shortly before the meeting of the Convention Mr. Binney had not been one of the bishop's advisers, and, in fact, had cautioned him against the advisers whom he had selected; but when the bishop found himself assailed by his supposed friends, he turned to Mr. Binney for help, which was freely given and never subsequently withdrawn. Holding that the truth could not be established, nor a just conclu-

sion upon the whole matter reached, without a fair trial, Mr. Binney advised against both the resignation and the acknowledgment of unworthiness, but although, by the persuasion of others, this advice was rejected, his loyalty to the bishop did not fail. Ultimately, as will be seen later on, he aided him to some purpose, but for the time he could do nothing except manifest his disapproval by withdrawing from all connection with the administration of the affairs of the Church. Believing that the sentence was, in its severity, utterly disproportionate to the offence, and, in its unlimited character, a violation of ecclesiastical law, he ceased to be a delegate to the Diocesan Convention, whose original action had led to the result, and even resigned from the vestry of his parish church.

Towards the close of 1845 a number of the leading business men of Philadelphia began a movement for the construction of a railroad from Harrisburg to Pittsburg, so as to connect Philadelphia directly by rail with the rapidly developing country to the west of the Alleghanies. That such a road would benefit the business interests of Philadelphia was manifest; that it would be directly profitable in itself was less certain, though perhaps reasonably so; but in any event the enterprise required what was for those days a very large capital. A committee of the promoters came to Mr. Binney and explained the details of the project and the advantages which the city would derive from its accomplishment. He fully realized these advantages and declared his readiness to subscribe to the stock of the proposed railroad company, but found that something more was wanted of him than individual financial support. The promoters realized that it would be very difficult to secure enough subscriptions unless they could arouse an unusual interest in the project (what nowadays would be called a "boom") throughout the

city and the State. To this end they proposed calling a "town-meeting," at which they wished Mr. Binney to take a prominent part. He objected that such a meeting might not realize their expectations, while, if it did, the force of the public opinion thereby manufactured would tend to practically compel many people to join in the scheme contrary to their own wishes or judgment. He held that the building of the railroad was a plain business proposition, to be considered calmly, and in which every man was entitled to join or not, as he might see fit, without being in any way subject to criticism for refusing. The committee did not adopt this view, and a town-meeting was held on December 11. Enthusiastic speeches were made and delegates were appointed to secure a charter and enlist general support for the enterprise. The Legislature was applied to, and on April 13, 1846, a bill to incorporate the Pennsylvania Railroad became a law.

By this time the promoters realized, or at least saw fit to acknowledge, that all the enthusiasm they could arouse would not suffice to induce private individuals or business corporations to unloose their purse-strings sufficiently to subscribe the requisite capital, and they proceeded to take a further step. A second town-meeting was held April 27, and resolutions were adopted recommending to the Councils of Philadelphia and to the commissioners of the various incorporated districts in the county to subscribe to the stock of the new company. Such a subscription meant necessarily that the city should borrow the money, and should levy taxes to pay interest on this increased debt, except in so far as dividends upon the stock might ultimately cover such interest. Mr. Binney considered that the city had no power to incur debt for such a purpose, that even if empowered, it could not wisely or properly make such a use of its credit, and that the attempt to overawe and compel the Councils to make the

subscription, by stirring up a popular feeling on the subject, was a gross outrage, all the more to be condemned because the leaders in the campaign of coercion were men who stood high in the community and should not have condescended to use such methods. For a time, however, he kept these opinions to himself.

The stock-books were opened on June 22, and the comparatively meagre subscriptions showed either that public enthusiasm was not the same thing as public confidence, or else that the proposal to make the city and other public corporations bear a large part of the responsibility had destroyed the stimulus to private enterprise. A resolution authorizing the mayor to subscribe in the name of the city for fifty thousand shares (\$2,500,000) was introduced in Councils, and its adoption recommended by a committee of both branches, but was lost on July 16 in the Common Council by a tie vote. Mr. Binney's oldest son, then a member of the Common Council, took a leading part in opposing the subscription, but without any consultation with his father whatever.

In his argument in the Girard Will case, when speaking of the power of the city to administer the trust created by the will, Mr. Binney had said, "The city of Philadelphia is a great commonwealth; and the powers of the corporation, for her good and the good of her citizens, are under no restraint but that of not violating the constitution and laws of the State," and he had cited the provisions of the charter of 1789 authorizing ordinances, etc., "necessary or convenient for the government and welfare of the said city." Some minds are so constituted as to see no distinction between the administration of property given to a city for the benefit of a class of the inhabitants and the borrowing money and levying taxes in order to join in a great business enterprise

like a railroad stretching across a State; and accordingly Messrs. Thomas I. Wharton and Thomas M. Pettit, in an opinion dated June 30, 1846, and published on July 4, cited Mr. Binney's language in the Girard Will case argument in support of their proposition that the city had the power to make the desired subscription. Mr. Sergeant's note of concurrence, appended to the opinion, was a great surprise to Mr. Binney, but he felt convinced that Mr. Sergeant had not examined into the matter with his usual thoroughness. A writer in the *United States Gazette* of July 8, using the *nom de plume* "A Voter," protested against the perversion of Mr. Binney's argument, while on the 10th some one, writing as "Many Voters," insisted that the argument covered the case. "A Voter" then replied at greater length, and in the course of a rejoinder "Many Voters" said, "I have a right to assume, if not to infer, from these premises that the principles of the certificate submitted to Councils unites (*sic*) in its favour the name of Horace Binney to those of John Sergeant, Judge Pettit, and T. I. Wharton." On the 17th a third anonymous writer in the *Gazette* denied the propriety of the inference, and said that Mr. Binney's opinion had better be asked and not assumed.

Some persons had known Mr. Binney's character so little as to suppose that he was himself the anonymous "Voter," but he set the matter at rest by a letter, published in the *Gazette* of the 18th, intimating that he was rather tired of having his name and supposed opinion bandied about in this way, and stating positively that he had had nothing, directly or indirectly, to do with anything that had been published in regard to the controversy. He added: "I have my opinions, it is true, upon the questions which agitate the city, and I humbly claim the right to hold them; but with anybody, except one member of the profession older than myself,

I do not think that I have held altogether five minutes' conversation about any of them."

While his opinion had not yet been expressed, it had been formally asked in regard to the right of the city to subscribe, and had, in fact, been written, for it is dated July 14, but the pamphlet did not appear until a few days later. The opinion contains an exhaustive review of authorities, concluding as follows:

This doctrine is liberal yet reasonable, giving the power to tax for all expenses incident to corporate duties, but denying it for the expense of what is not a corporate duty, though it may be alleged by the majority to be convenient to or to promote the welfare of the inhabitants. If the taxing power of the corporation can be carried beyond this, the inhabitants of this city and their property are not under the protection of the Legislature of the State, but at the mercy of a majority of the city Councils whenever they are satisfied by a speculative inquiry that the money, whenever and upon whatever expended, will promote the welfare of the city.

The result of the whole is that the subscribing, the borrowing, and the taxing, being none of them incident to the exercise of a power for the government of the city, for its welfare, cannot lawfully be exercised by the Councils, but that each and all of them, though ordinances be passed to authorize them, will be without any lawful authority whatever, and therefore void. To this opinion I have come. I may be wrong. As other gentlemen of the profession differ from me, either they or myself must be wrong. I shall bow respectfully to the judicial department if it shall reject my conclusion. In the mean time I do not think that I am likely to reject it myself.

When the result of the vote in the Common Council was announced, one of the newspapers supporting the railroad significantly remarked that "this will probably be decisive until after the October election." The full meaning of this remark became apparent when the nominations for the au-

tumn election were made. The Whig party was in a minority in the city, but it could reasonably count on a large plurality of the votes, as the opposition to it was divided between the Democratic and Native American parties, and in this particular year the indignation due to the reduction of protective duties by the Democratic tariff bill was such as to assure a Whig victory beyond peradventure. The candidates for Councils were voted for on a general ticket for the whole city, and when the Whig nominations were announced it was realized that most of the Whig members who had opposed the subscription, including Horace Binney, Jr., had not been renominated, their places on the ticket being taken by men who were believed to side with the railroad. That this was the work of the railroad promoters no reasonable man could doubt, although the move was partly concealed by their open advocacy of a "railroad ticket," composed of candidates selected from the tickets of the three regular parties, but chiefly Whigs. The existence of a ticket avowedly in favour of the railroad interests would naturally tend to mislead some voters into thinking that the Whig ticket was not in the main a "railroad ticket" also.

The utilization of party machinery for private ends was not so common in 1846 as now, and called forth an indignant protest. An address to the citizens of Philadelphia, signed by Mr. Binney and sixty-eight others, all of them men who either had already won by their merits, or were destined ultimately to win, the very highest standing in the community, was published on October 9. It began with this statement:

A majority of the ward delegates, elected by the Whigs in the last summer to select candidates for the coming election, deemed it fit to make their selection for the city Councils in such a manner as in case of success will secure a majority in both Councils in favour of a



subscription to the stock of the Pennsylvania Railroad. Without any instructions to this effect from the people who were their constituents, without any previous general notice that the ward elections for delegates were to turn upon this distinction, and in departure from the purpose of their appointment, which was to select candidates possessing general fitness as representatives of a political party and as guardians of the city interests, they have rejected and selected with an exclusive view to a particular local measure. As far as party organization can attain this end, they have closed the door against a free expression by the people upon this momentous subject, and against the election of any other Councils than such as by prearrangement will cast a majority of votes in favour of this subscription; and if the candidates thus selected by the Whig delegates shall receive the votes of all who usually vote with their party, and the party shall have its usual success, the subscription, we have no doubt, will be authorized by an ordinance, whether the city have lawful authority to make it or not and whatever may be the consequences of such a vote.

After a review of the railroad movement, and of the objections to a subscription by the city, the address concluded by recommending a ticket composed of the best men on the three regular tickets, men who, though not pledged in any way, could be trusted to vote conscientiously, without regard to popular clamour.

As Mr. Binney's name heads the signatures to this address, and as it is an appeal to reason and fair dealing, not to prejudice, it was presumably the work of his pen. It was met by a numerously signed address in favour of the subscription, denying complicity in the Whig nominations, urging voters to support the "railroad ticket" already referred to, and alluding to the opposition to lighting the city with gas when that project was first started. The insinuation that the subscription was only opposed by the class of

people who always oppose what is new, without regard to its advantages, was still more pointedly made by a writer in the *United States Gazette* of October 12, signing himself "Clinton." Referring to the address signed by Mr. Binney, he said,—

A more singular and surprising document emanating from a respectable source, I will venture to say has seldom been addressed to the public. I very much mistake its destiny if it does not shortly take its place beside the *Anti-Gas* and other non-improvement remonstrances which a few years since issued from the same distinguished source, and which are now among the most remarkable literary and politico-economical curiosities of the age.

The reference to "the same distinguished source" was practically an assertion that Mr. Binney had himself been one of those who in 1833 had got up the "*Anti-Gas*" remonstrances to Councils. This covert assertion rather took the popular fancy and gained credence, though it is significant that no one made the assertion directly and publicly, so as to give Mr. Binney an opportunity of meeting it. It was, however, the foundation of what is probably the general belief of Philadelphians to this day, to say nothing of those wits in other places for whom Philadelphia often serves as a target. While it was beneath Mr. Binney's dignity to notice the assertion publicly, the following letter to his son, dated October 12, 1846, the day that "Clinton's" letter appeared, shows the truth of the matter.

MY DEAR HORACE,—

If a memorial against gas was even *signed* by me, I will believe it when I see my signature and not before; but altho' I have probably given more offence by refusing to sign memorials than almost any other man in the city, I cannot say that I did not sign. That I wrote the memorial or promoted it, otherwise than possibly by signature, I deny. I deny it, not that I recollect anything about it, but because

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I do not believe it possible that such a fact, if it existed, should have left no trace whatever on my memory. I have not the slightest recollection that I ever was opposed to the measure of introducing gas, or even thought about it. If this is the greatest lie they tell about me, don't be disturbed. They are welcome to any part of my character that they can take away, and much good may it do them. I hope to keep some for my own use, in spite of all they can do.

Affy. Yrs,

HOB: BINNEY.

P. S.—I recollect well that (and I believe it was while I was in Congress) I especially promoted Mr. Merrick's mission to Europe to examine the English and other gas-works, and I obtained a letter for him from the Department of State to promote his object.<sup>4</sup>

The denial is not absolute in terms, but all who know Mr. Binney's strength of memory and habitual cautiousness of statement, to say nothing of his rigid truthfulness, must realize that "Clinton's" covert assertion is in effect very positively denied. To the end of his long life Mr. Binney's memory was one of his strong points, and this letter was written when he was not yet quite sixty-seven, and less than thirteen years after the anti-gas petitions were circulated. A less cautious man would have given an out-and-out denial, but Mr. Binney's guarded language carries even greater conviction with it.

To return, however, to the matter of the subscription. The address in opposition was unheeded, the Whig victory carried with it the election of the "slated" Councilmen, and in November, 1846, both branches of the new Councils voted for the subscription. The amount subscribed, \$2,500,000, one-fourth of the entire stock of the railroad company as then

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<sup>4</sup> The publication of this letter, at the present writer's request, in the *Evening Bulletin* of December 28, 1902, has probably prevented the story from receiving much attention hereafter.

authorized, was subsequently even increased to \$4,000,000. Still, in spite of the positiveness of the legal advisers of the subscription, those concerned in the undertaking did not really feel sure of their ground, and as soon as the Legislature met in 1847 a bill was introduced expressly authorizing municipal corporations to subscribe to the stock of the company. Hoping that the subscription might not be persisted in if such an authorization were refused, a memorial, written apparently by Mr. Binney, was presented to the Legislature on January 26 against the proposed bill. Even the Harrisburg correspondent of the *North American*, a paper avowedly in favour of the subscription, referred to this memorial as "a well-written document, and its arguments close and strong." As a matter of fact, the memorial was not actually needed, the lower house having rejected the bill a few days before, which killed it for that session. By this time, however, the railroad promoters had come to regard the subscription as a matter of life and death to their enterprise, and it was actually made without waiting for legislative authorization.

In this matter of the city's subscription Mr. Binney and those who stood with him suffered for a while the usual penalty of opponents of a popular measure, being laughed at as old fogies and obstructionists; but in time they received the almost equally usual vindication of those who follow reason and judgment as against popular clamour, a vindication which may be read in opinions of the Supreme Court, in the statutes, and even in the Constitution of Pennsylvania, but which is probably most complete to-day in the view which numbers of the most thoughtful citizens hold in regard to the results of the steps taken in 1846.

The vindication of Mr. Binney's view of the legality of subscription came speedily. Among those who controverted

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his opinion was the Hon. Thomas Sergeant,<sup>5</sup> a justice of the Supreme Court of the State. Oddly enough, Judge Sergeant had wholly forgotten<sup>6</sup> that in May, 1839, the court of which he was then a member had decided in accordance with Mr. Binney's view in *McDermond vs. Kennedy*, an unreported case.<sup>7</sup> That case concerned a tax levied by the borough of Newville in Cumberland County to pay a subscription of the borough towards the cost of bringing a railroad near the town. The Common Pleas had held that the power of the borough to enact rules, ordinances, etc., "to promote the peace, good order, benefit, and advantages of the said borough," referred to corporate rights and duties only, with which the railroad had nothing to do, and the Supreme Court had affirmed the decision. As soon as attention was called to this decision, the authorization which had been refused in 1847 became a practical necessity, and a more pliant Legislature passed the act of March 27, 1848, authorizing Alleghany County, the cities of Pittsburg and Alleghany, and the municipal corporations in Philadelphia County, and *retroactively* authorizing the city of Philadelphia to subscribe to the stock of the Pennsylvania Railroad Company, to borrow the money to pay the amount subscribed, and to provide for paying the principal and interest of the loans. "It was therefore settled that the original subscription of the city to the Pennsylvania Railroad Company was invalid."<sup>8</sup>

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<sup>5</sup> Judge Sergeant's opinion was published in the United States Gazette of November 16, 1846.

<sup>6</sup> Apparently the three other surviving justices had forgotten it too, as none of them called attention to it at that time.

<sup>7</sup> Since reported in Brewster, 332, and 3 Clark, 490.

<sup>8</sup> *Pennsylvania Railroad Company vs. City of Philadelphia* (47 Pa., 189, 193). In Mr. Binney's opinion the act of 1848 was itself an unconstitutional violation of the principle of equality in the contributions of the citizens to public burdens.

Mr. Binney's position as to policy was vindicated as fully, though more slowly. From time to time for several years the Legislature authorized Philadelphia and various counties and municipalities to subscribe to the stock of corporations about to be formed, so that after a while Philadelphia held "five millions of valuable stock, and five millions of utterly worthless stocks in various railroad companies, subscribed under a great outside pressure [precisely the condition which Mr. Binney had protested against in 1846]. The evils of these subscriptions by counties and municipal corporations were so aggravated that it became necessary to interfere and prevent by a constitutional prohibition all future pledges of municipal faith and property for such purposes under the sanction of the Legislature, who alone possessed the power to grant the proper authority."<sup>9</sup> Accordingly in 1857 the Constitution was amended so as to provide as follows:

The Legislature shall not authorize any county, city, borough, township, or incorporated district, by virtue of a vote of its citizens, or otherwise, to become a stockholder in any company, association, or corporation; or to obtain money for, or loan its credit to, any corporation, association, institution, or party.

The same provision with slight verbal changes is found in the Constitution now in force.

The worst result of these investments in railroad stock by Philadelphia and other communities in the State was not the loss of many millions of the taxpayers' money, but the close association and alliance thereby created between certain powerful corporations and the various municipal govern-

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<sup>9</sup> *Pennsylvania Railroad Company vs. City of Philadelphia* (47 Pa., 189, 193).

ments, an association and alliance which is generally thought to be closer to-day than ever, and to be one of the leading causes of the misgovernment long so manifest throughout the State, and especially in Philadelphia. The city sold its Pennsylvania Railroad stock (at a profit, it is true) after some thirty-five years, but the alliance between those in control of the two corporations survived the sale. Those who attended a crowded meeting held at the Academy of Music in Philadelphia on February 4, 1890, to protest against the action of Councils, under the influence of the Pennsylvania Railroad, in blocking the improvements which rival companies sought permission to undertake, may recall the loud applause which greeted a leading member of the business community, the very class who in 1846 had demanded the city's subscription to the stock of the railroad, when he declared that time had proved that policy to have been a mistake, that "that subscription was the birth of a railroad, but the death of our city." Mr. Binney's vindication would seem to be complete.

While Mr. Binney held the course pursued by the promoters of the railroad company to be unjust and dangerous, his antagonism was in no sense personal, and after the subscription had been legalized they were very anxious to have him become a stockholder, to show that he did not oppose such an important business enterprise. He replied that he never had opposed the railroad except as regards their involving the city in a large illegal risk, and their doing so by the force of popular clamour; but that having publicly declared his opinion on these points, which he held to be matters of principle, he could not consent to impair the force of his example by taking a single share of stock in the company, and he never did.

The period from 1844 to 1848 saw the annexation of

Texas and the Mexican War, both events bringing increased strength to the slave power. Mr. Binney heartily condemned both, but of all his letters written at that time, the following is almost the only one that remains:

*(To the Hon. D. A. White.)*

PHILADA. Feb. 22, 1847.

I cannot tell you what pleasure I have derived from your eulogy upon Pickering. How true it is from beginning to end! How worthy of him, how like him, how like *to* him, how exactly the thing which those who knew him in his youth, and from his youth, desired to have! It has taken me back to our college life, and brought before me almost all my intercourse with him; and such as I knew him to be, such he ever was afterwards, by natural and perhaps necessary development, not a branch of a twig having been turned from its true course and shape by the flaws of life which distort ill-rooted men, or by the affectation which would bend them in a way they're not inclined to. He was pure, gentle, affectionate, social, faithful, wise, sober, grave; a companion for all hours, a friend for all occasions; a most excellent person, apart from his knowledge and literature. You have shown him in all his virtues, as well as in his works. How well I recollect him, how truly I loved him, how thoroughly am I delighted and satisfied with what you have said of him!

Are there many such men nowadays? Are there any such? Are such men born; do they germinate in this century? I hope so, with my whole soul, for both of us have sons who have come into this American world since the beginning of that disastrous twilight which the eclipse of old Federalism ushered in. May they not be dwarfed and wilted in it, like the poor plants in a cellar! But I have great, great fears. Such men as Pickering, and those who were best reared in his day, were told to take a star for their guide, and the sky was clear enough in their youth, and they saw it, and followed it. But now the skies are overcast, and instead of looking upward for our guide, we look into each other's faces to get our cue, and shape our courses and ends by the smiles or frowns that we see there. Instead of a



pure and true nature being drawn out by elevated principle, it is twisted and bent and perverted by a spirit of conformity to what is about us. We are a public-opinion-loving, a popularity-seeking people. It is the same with men and boys. I have no hopes of it. The flight is too low and too irregular for my augury. It is a comfort, however, to have lived a cotemporary of so fine an example of a true light truly followed, of a high standard amply attained, as we have had in the case of *our* college friend, of *your*, and I always envied you both your neighbourhood, friend of a whole life.

I don't know if you look to Washington, or think of it, or of the Mexican War,—the scorpion No. 1 from the egg of Texas. It's of no use. But without thinking of either, I confess to the comfort of seeing how soon the bloody instructions have returned to plague the inventor. They cannot "trammel up the consequence" for their souls, and I suppose that we may thank God for that, without any treason.

In April, 1848, the decision of the Supreme Court of Pennsylvania in *Murphy vs. Hubert*,<sup>10</sup> to the effect that the Statute of Frauds did not apply to trusts, or equitable estates or interests in lands, attracted Mr. Binney's attention, Chief Justice Gibson's very brief opinion having been shown to him in manuscript soon after it was delivered. He considered that it involved a misinterpretation of the statute, and might have very serious consequences in inducing the perpetration of fraud and perjury by parol declarations of trust. In order to bring about a reconsideration, if possible, or a new statute to cover the breach made in the old one, he published in October a very careful review of the law upon the subject. The decision was not reconsidered, but the act of April 22, 1856, ultimately extended the Statute of Frauds to equitable estates.

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<sup>10</sup> 7 Pa., 420.

In the death of his older sister, Mrs. Wallace, in July, 1849, Mr. Binney suffered a loss second only to that of his daughter many years before. Companions in childhood and youth, both of them mentally gifted to a high degree, they had always been in close sympathy, and their admiration and love were reciprocal. Another sorrow came the following month in the death of Charles Chauncey, the most intimate of all Mr. Binney's friends outside of his own family. Their acquaintance, begun immediately after Mr. Chauncey came to Philadelphia from Connecticut, in 1798, had speedily ripened into warm friendship (possibly all the sooner from the fact that Mr. Binney, having returned from New England less than a year before, felt himself still somewhat of a stranger), and from the time that the latter found his place at the bar they were associated together in a number of cases, and opposed in perhaps an equal number. On Mr. Binney's side the friendship was based more on regard for Mr. Chauncey's high character and attainments than on any great congeniality of temperament, for the nature and points of view of each were strongly individual. The one was essentially a Connecticut man, while the other showed unmistakably his descent from the men of Massachusetts Bay. Yet the friendship was very genuine, and during more than fifty years had never been clouded but once, when an explanation, given as frankly as it had been sought, speedily cleared matters up.

At the meeting of the bar, held August 31, Mr. Binney was the chief speaker, although it was with difficulty that he could bring himself to dwell publicly upon his friend's gentle and honourable character. The theme was almost too sacred for him to touch, even before his brothers of the bar.

## XI

## LIFE IN RETIREMENT—LITERARY WORK

1850-1859

FOR nearly thirteen years Mr. Binney had devoted himself to office practice, investigating and giving opinions on legal questions, and this work had increased in volume as the years rolled on. In the spring of 1850 some exceptionally severe work brought on a serious inflammation of the eyes, which he took as a warning to give up all professional labours whatsoever. From this time on he refused to undertake any such work except where the request was based on some special claim of friendship, and these exceptions were gradually brought to an end by his declining all compensation. He had no intention of sinking into a life of indolence, however, pardonable as such a life might have been at his age. On the contrary, as far as his eyes permitted (and in time they substantially recovered), he kept himself fully occupied, but free to read or write what and as he chose, without being hampered as to time or subject by any professional responsibility. He rarely now appeared at any meeting of a public character, but all important public matters received his careful attention. His advice was given whenever sought, and though never anxious to see himself in print, he made his opinions publicly known whenever he felt it incumbent upon him to do so. As Sir J. T. Coleridge wrote of him in 1860, he was contented, or, rather, he preferred "to enjoy the happiness of a domestic and literary retirement, exercising only that influence on the State—difficult to measure, but large in amount—which almost necessarily attends

the great and excellent, who, living without office or profession, seeking no distinction, but shunning no social duty, are ready and efficient agents for good to all within their sphere.”<sup>1</sup>

His time at last being his own, so far as any man's can be, he was able to take up subjects of more general and permanent interest than the legal points with which he had been so long concerned, and hence to this later period of his life belong most of his printed writings. It has apparently been thought that for a certain time his mental vigour declined to some extent, but that after some years of rest he ultimately regained it in full.<sup>2</sup> There is really nothing to justify any such idea. The strength and brilliancy of his mind were not even temporarily impaired by age, but after 1850 he was left free to follow his own bent, and this freedom soon bore fruit of a kind which his years of professional labour had not produced. Not all of this fruit was given to the public, but it is a fact that after 1850, as before, he continued to make the most of himself in reading and writing, merely directing his mind to other channels of thought than those which, in the main, it had followed previously.

In October, 1850, the Constitution of Pennsylvania was still further changed by making all judicial officers elective. Mr. Binney had been expecting this change ever since the tenure of good behaviour had been abolished in 1838, and his expectation that this system would prevail throughout the States generally has also been fulfilled, for to-day the judiciary is wholly elective in thirty-five States (in eighteen of

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<sup>1</sup> Quarterly Review, April, 1860.

<sup>2</sup> Hon. Hampton L. Carson, who wrote several interesting articles on Mr. Binney's life and works in 1892 for the Philadelphia Times, seems to have had this idea when he referred to Mr. Binney's "now thoroughly awakened mind," and to the melting of "the frost of age which had congealed his blood."

these for the short term of six years for the highest court, and in two for even less), chosen by the Legislature in two, partially or wholly appointive in eight, and with the tenure of good behaviour in three only. New Hampshire, Massachusetts, and Rhode Island alone have the distinction of upholding the traditions of an independent judiciary, and even in these States it does not extend to justices of the peace.

So far as concerns the national judiciary, the people have fortunately shown that they possessed a greater residuum of conservatism than Mr. Binney anticipated, or at least that they did not think an elective judiciary so important as to warrant an attempt to overcome the practical difficulties which now prevent almost any change in the Federal Constitution, whether wise or unwise. His own expectation in 1850 was that whenever three-fourths of the States had established for themselves an elective judiciary, holding office for a term of years only, they would put the Federal judges upon the same basis, and this expectation was certainly not unreasonable, in view of the many constitutional changes which he had already seen. "James I. and James II.," he wrote, "thought that every judge should hold his office at the pleasure of the crown. All despots think the same thing; and here universally the majority of the people is the despot, more absolute than any James, because there is nobody to confront them. When constitutions were first made among us, there was a disposition in the people to part with power to their representatives, and when it was of a nature not to be given to representatives, nor to be possessed safely by themselves, they were disposed to tie their own hands. That day has gone by. The day has come in which the people desire to reclaim all the power they have parted with, and they will do it, and without the slightest apprehension that they

will not use it all for the public good. James II., I have no doubt, thought the same. . . . I would cheerfully give the appointment to the people if they could give the power away from themselves, to be held by the only tenure that reason and experience sanction for the security of liberty and property, the tenure of good behaviour; but the tenure at the pleasure of the appointing power, it being effectively the supreme power in the State, is both a crime and a folly."

Happily the final change which Mr. Binney feared is far less likely now than it seemed half a century ago, and it is not too much to say that throughout the country the Federal judges, as a rule, stand higher in public esteem than those elected by the people themselves.

In April, 1852, the Philadelphia Contributionship, the oldest fire insurance company in America and one of the oldest in the world, celebrated its hundredth anniversary. Mr. Binney, who had been a director from 1817 to 1819, and continuously since 1831, and was then the chairman of the board, delivered an address, tracing the history of the company (which began with an insurance for £500 upon the house of one John Smith, and a hundred years later insured \$8,000,000 worth of buildings and had accumulated \$700,000 in premiums) and reviewing the general conditions of fire insurance in Europe and America at that time. His object was not merely to show the extreme prosperity of the company in the past, but to give its members something to think about for the future. He pointed out, for instance, the connection between the very low insurance rates of Paris and the excellence of the corps of *Pompier*s, "governed by one authority over all, with proper subdivision and subordination." "The city of Philadelphia," he added, "as well as the insurance companies, should ponder this important fact." The

point of this statement needed no elaboration for his hearers, for the one serious blot on the city's administration at that day was in regard to the extinguishment of fires, which was left exclusively to volunteer companies, between some of whom great rivalry and even bitter feuds existed, so that a fire was often the occasion of a bloody fight between the companies first on the scene.<sup>3</sup> A suggestion of reform may be easily read between the lines.

This year marked Webster's last failure to secure a nomination for the Presidency. That he should have sought it at all was a matter of deep regret to Mr. Binney, as the next letter indicates.

(*To Hon. D. A. White.*)

PHILADA. Sept. 10, 1852.

. . . My aspiration for Mr. Webster was, at one time, that he should raise himself to the regions of serene air, as such an intellect could have raised him, "above the smoke and stir of this dim spot," and there accompany this part of earth in its revolution, the living oracle of the principles by which this government ought to be administered, without condescending to party rewards or turning his ear to them. If he had abjured the Presidency and had refused all robes but those of the *great Senator*, I know of no fame, Greek or Roman, that has mounted higher. He would have bound around him all the conservatism of the country, and, without direct or official rule, would have checked and counterpoised all excessive deviations from the true orbit of the Constitution. And my fixed faith, after forty years' observation, is that the most that a pure and wise party can do for the country is to become a check and counterpoise; and that if it must also have office and direct rule, it must part with half its virtue to obtain them, and in more or less time lose all that can distinguish it

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<sup>3</sup>The influence of Mr. Binney and other progressive citizens was steadily exerted for many years against this abuse, which was at length reformed, but unfortunately not to the extent of freeing the firemen from a degrading partisan servitude to political bosses.

from the worst competitor that takes the field against it. Mr. Webster has seen the party to which he has belonged growing less and less pure for twenty-five years. He must have known it to be the course and tendency of all such parties in such a country. Why did he not involve himself in his virtue, and rise above the exhalations that were about him? Is it that he is wanting in some of the small qualities that are necessary to true greatness? I do not ask you to tell me, and I do not want to know. I fear he has not taken his own advice, as he ought to have done, upon all occasions, or that his adviser is not always that good sense, which *only*, Pope says, is the gift of Heaven, and, though no science, fairly worth the seven. I would not, however, be the means of plucking a leaflet from the wreath his great powers have won, and therefore beg you to burn *this* as well as *that*.<sup>4</sup>

In November John Sergeant died, the last of Mr. Binney's fellow-students and of those who had been his intimate friends, with whom he had been associated in many legal victories, including the last and greatest of them all. The intimacy between them had been "never surpassed between two men," but for some years before Mr. Sergeant's death it had wholly ceased, though for reasons which Mr. Binney himself never fully understood. It was Mr. Sergeant who had withdrawn his friendship, not Mr. Binney. Owing to their position in the community, the severance was perfectly well known, but at the bar meeting held on November 26 it was felt that no one living could speak of Mr. Sergeant as understandingly and appreciatively as Mr. Binney. Conscious of no wrong towards his former friend, in deed, word, or thought, he was only anxious that, as the reconciliation he had so greatly desired was no longer possible on earth, the unfortunate misunderstanding should be shown to be as nothing in comparison with the long friendship. Accord-

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<sup>4</sup> This refers to a previous letter. The request was subsequently revoked.



ingly he closed his prefatory remarks with these significant words:

I knew him well; I respected him truly; I honoured him faithfully. I honoured and respected him to the end of his life. I shall honour and respect his memory to the end of my own. No trivial incongruities of feeling or opinion, no misinterpretations, however arising, no petty gust, no cloud of a hand's breadth, which may and will chill and overcast the common sky of the truest friends in a life of fifty-five years, ever for an instant disturbed the foundations of my regard for him, or even reached the depths in which they were laid. These foundations were laid upon his principles, as I well knew them fifty years ago. They were laid deep upon that sure basis, and they were beyond the reach of change or chance, as his principles were.

Then followed a thoroughly sympathetic review of Mr. Sergeant's character and career, concluding as a valedictory to the bar.

Mr. Chairman, and gentlemen of the bar, it has pleased God that I should survive my two contemporaries of more than half a century,—Charles Chauncey and John Sergeant. From the tenacity with which most men hold to life, such a survivorship may seem to be desirable; but it is not wisely desirable by any man, for it cannot be reverently asked of Heaven. . . . Ask it not. Ask for wisdom, and length of days may be granted, if it is in the pleasure of God. But ask not for length of days.

It has been my most grateful, most painful duty to declare to this bar, upon two occasions, the impressions that have been left upon me by the death of these two eminent men. Let no man envy me the task, however great the satisfaction may be, in short retrospect to myself. Henceforth no such duty remains to me. I have uttered the last words at a bar meeting upon the departure of friends. I have probably uttered my final words to the bar of Philadelphia, except the expression of my most cordial regard and most affectionate salutations to you all.

Mr. Binney succeeded Mr. Sergeant as Chancellor of the Law Association of Philadelphia,<sup>5</sup> of which both had been founders, but after two years he declined re-election, as his age made it uncertain whether he could at all times fulfil the duties of the office.

Early in 1853 Mr. Binney received the sad news of the death, in Paris, of his nephew, Horace Binney Wallace, a member of the bar and a man of very remarkable culture, who, though only thirty-five years old, had already attained distinction as a writer, not merely on legal topics, but on art and literature. Mr. Binney wrote a short obituary pamphlet in regard to his nephew, whose death, as he wrote to Judge White, "has afflicted me more than such an event ought to afflict an old man, who is near dying himself to all that lives on this earth. The notice which I have sketched of him, instead of going beyond his merits, as such notices commonly do, does not in truth come up to them. He bore my name, and that circumstance probably drew me nearer to him when he was young, and I as his sponsor in baptism felt a sort of duty to observe him; but apart from personal partiality and relation by blood, my fixed opinion is that if his life had been spared he would have been one of the first writers, critics, and lawyers of the age, and that his death is a great public loss. This also is the general opinion of the profession in this city."

Mr. Binney's keen sorrow over this bereavement long remained. Even two years later a letter wholly devoted to the same subject shows that it was still fresh in his mind.

One of the tasks which Mr. Binney set himself during his

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<sup>5</sup> He had been an active member of the Library Committee from 1805 to 1827, and Vice-Chancellor and *ex-officio* Chairman of the Committee of Censors from 1827 to 1836.

years of retirement was to go over his reports, and prepare notes showing the subsequent development of the law along the lines of the various cases reported. This work he completed in February, 1853, but it never appeared in print. He never could be brought to believe that any product of his pen was really valuable, and ultimately gave binding instructions that all these notes should be destroyed after his death, and it was done accordingly.

In consequence of this review of the reports, he wrote, "my respect for Chief Justice Tilghman is much increased, and it is surprising that in this day of judicial legislation and speculation, his decisions should have been so little disturbed. Notwithstanding professions, I doubt whether his successor thought well of him, or rather was willing that others should think he thought well of him. He differed from him sometimes without a shadow of reason; and in one or two instances I have shown this, perhaps unsparingly. There was no possible comparison between the men in fundamental learning, in calm reflective consideration, in judicial integrity in its highest and best meaning, in logical connection, and, above all, in prospective wariness."

By the year 1853 the great increase in the volume of American travel in Europe had made the question of the citizenship of children born in foreign parts a very practical one. The naturalization laws did not cover such cases, and all attempts at a change in the law had hitherto failed. In fact, one of Mr. Binney's own grandsons was an alien as the law then stood. During this year he wrote a timely essay on "The Alienigenæ of the United States," and its publication undoubtedly aided in securing the passage of the Act of February 10, 1855, now Section 1993 of the Revised Statutes of the United States, which established the citizenship of the foreign-born children of citizens. "Congress, I learn," wrote

Mr. Binney shortly afterwards, "have passed a bill for the relief of the *alienigenæ*, and, for a wonder, as it was a very reasonable bill, President Pierce has not vetoed it."

The movement for the consolidation of the city of Philadelphia and the surrounding districts into a single municipality, unsuccessful in 1845, was renewed some years later, when conditions had materially changed, owing to the great increase in the population of the districts. Mr. Binney's advice was therefore sought, and in a letter of June 23, 1853, to his son, one of the leaders of the movement, he declared his adhesion to it.

I regard all the objects of local and immediate interest at this time in the city as much more intimately connected by intrinsic relations than they are by mere contemporaneousness. The fire department, the groggery system, the venal selection of candidates for office by bargains, expressed or implied, for the benefit of the wire-workers,<sup>6</sup> and the tax collection system all act upon and are acted upon by each other. Those, therefore, who are of the same mind as to one or two of these may very properly unite in the reform ticket with those who are more interested in other objects. . . . I have come to the opinion that we must have a united power through all the parts of our city and districts to make any of these reforms attainable; and although in the beginning I opposed what is called consolidation, and both wrote and spoke against it, and still think that it will have its specific evils or inconveniences, yet its highly probable effect will be to put down certain very gross abuses of recent years, and I no longer oppose it. Indeed, in some respects, the grounds of my opposition have become obsolete. That has already happened in the city which I feared consolidation would bring about; and consolidation, under a good charter, may now tend to prevent further progress in the same bad course.

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<sup>6</sup> Consolidation, unfortunately, failed to remedy this great evil, thus showing clearly that good laws cannot take the place of civic righteousness. The hope expressed at the close of the above extract, referring evidently to the election of better men to the city Councils, was not realized.

The letter went on to point out the necessity of electing men of the best type to both houses of the Legislature to urge the passage of the consolidation bill, and dwelt specially upon the great benefit that would result if Mr. Eli K. Price would consent to serve in the State Senate. This course was pursued, and through Mr. Price's efforts the consolidation bill became a law on February 2, 1854. When Mr. Price, in 1872, wrote an historical account of "The City's Consolidation," he dedicated the book to Mr. Binney, making the following acknowledgment:

Though not personally an actor in the work of consolidation, the counsel and countenance of Horace Binney were invaluable to his active juniors, and with the public largely influential. With the writer his opinion was authoritative to induce him to submit to the demand of his fellow-citizens to represent them in the Senate.

The year 1854 was marked by a movement for the acquisition of Cuba. Conditions have changed since then, but in view of the recent expansion of the United States, Mr. Binney's idea of the scheme, written to his son, then in Europe, may not be devoid of interest.

June 14, 1854.

. . . They talk, you may see by the *Ledger*, though perhaps it is not there, of a Commission to Spain to purchase Cuba, or something like that, Mr. Dallas and Mr. Cobb to be adjoined to Mr. Soulé, the present member. If you should see the Queen of Spain, give my compliments to her, and tell her, and you may tell the Emperor of France and the Queen of England the same thing, if you get a private opportunity, that if they want to give us something to do at home for the rest of our lives, so that the people abroad may mind their own business, by all means to sell us Cuba. I have heard of a man's wanting to sell a travelling menagerie, consisting of rattlesnakes, two porcupines, and a grizzly bear, with the option of taking a hyena

if the purchaser liked him upon a trial. Whether he found a purchaser, I do not know. But I would take a whole island full of such, without any trial at all, rather than four hundred thousand slaves and half as many *bozales* (slaves in violation of law) who must be sent back or declared free, and with them a slave island, for the approaching dissolution of this Union. It will be hard to hold us together as things are; but with a slave island State of Cuba, purchased by this free and enlightened republic, it would be only immorally possible—morally impossible, I should say, without any doubt. For Cuba would necessarily be only the *first* island, if it did not put an end to us; and a chain of black beads about our Caucasian throat ought to choke us, if it should not. In fine, Cuba, Nebraska, and the Mexico Gadsden treaty mean progressive slavery, and mean nothing else; and in my opinion, when this shall come to be the declared and settled policy of Congress, the long-headed people of some of our Atlantic States will be inquiring whereabouts the break had best be, and prepare accordingly. When our Confederation policy—which was progressive emancipation—shall be completely reversed, I think it will be found that the old account book by double entry, black and white, is full, and that some portion of this people will open another, by single entry, all white. The future has been growing darker and darker to me for thirty years,—I mean the political future,—and is now very dark and fuliginous. Doubtless it is in part the fault of my old eyes! Franklin Pierce, I hope, sees farther and better than I do. We shall know something more of it about the time of the next Presidential election.

Nothing further at present. All here, especially your mother, send a thousand embraces. I shall want to hear something of whom and what you see, after you get out of the entry, into the house; but what I most desire to learn is that your throat gives you no further trouble, which, however, I expect will come at the conclusion, and not immediately.

When in New England in the summer of 1851, Mr. Binney had wished to revisit the scenes of his boyhood, and espe-

cially to show them to his wife. Watertown and Dr. Spring's house were readily found, but Menotomy, where he had lived the year before entering college, seemed to have vanished from the earth. Starting out on a road which he thought he knew as well as any Philadelphia street, he found strange houses and new and confusing cross-roads. The name of Menotomy was unknown either to the driver or to the people whom they met. Unfortunately their time was limited, and so, when after a little they saw a pond,—“ I said to my wife, ‘ there, there it is,’ for which she gave me a kiss, I knowing all the time that it was not *the* pond, but determined not to disappoint her. It was Fresh Pond, a mile or two to the south of Menotomy. We got what pleasure we could from this pretty view, my wife, of course, imagining that she saw the very house that I resided in and the pond where I caught a memorable pike she had heard of, and I dodging as well as I could her minute inquiries about precise localities, so as to avoid any very dingy lie. Menotomy, however, as a reality, was at least two miles off.”

In 1855, when on a visit to his younger son at Providence, Mr. Binney was more successful. After visiting Cambridge to note the buildings (Stoughton, Holworthy, etc.) which were new since his college days, and to point out his old rooms in Hollis, “ we proceeded on the public road, *I* to Menotomy, the driver and horses to West Cambridge. The road I knew well, the houses, some handsome, some common, I knew not at all. In about three miles, the driver was making a short turn to the left. ‘ Halt,’ I cried out; ‘ you are going wrong; that is not the way to Menotomy. Keep on as you were, and go ahead.’ His answer was, ‘ That is the road, sir, to Spy-pond,’ and I saw at the corner a placard ‘ Spy-pond Hotel.’ I repeated, ‘ Go ahead. I don’t want that Spy-pond, I want Menotomy.’ ‘ I will drive just as you tell me, sir, but I don’t

know that place.' 'Keep on as you were, and when you see a graveyard, turn short to the left alongside of it.' In a minute we spied the gravestones, and in another minute we took the left turn, which brought me at once to the place where I had passed so many cheerful months. But, to my grief, a large showy house, coming out nearly to the road, had apparently supplanted my old abode, and my landmark was gone. I told the driver to walk his horses, and I was about to curse the man that had removed his neighbour's landmark, when, as we turned the corner of this new house, *there*, in its quiet old niche, about a hundred yards from the road, stood my old house, exactly the same in shape and shade, and with the same lawn, fences, side-road or approach, and barn, as sixty years before.

"We got out and walked up the carriage-way to the house, and I recalled to William, as well as time would allow me, my early goings in and out of that house, my way across two fields to the parson's, Mr. Fisk, to whom I recited my Greek and Latin, the path over one of the fields, now obstructed by a large church, over the other by three or more villas and their appurtenances, shutting out the parson's house, if it was still there, and confounding all my memories. Everything about me was new, except Polly Cook's house, and this seemed to have been preserved in the same old maiden dress that its good mistress, the daughter of the former minister, the old-time friend of Dr. Spring, had worn in her day, and had put upon her mansion before I went to live under her eye.

"We returned to the carriage, and directed the driver to walk his horses, while I surveyed malignantly the fine villas which I supposed had blotted out Parson Fisk's. Their front gardens or lawns were not deep, and then came the new houses and their out-houses, and there must have been half a



dozen of these on the road-side, which made me desperate, as one or all were usurpers of that pretty parsonage that to my eye was worth them all, and which I could not see in any direction. At length, [a turn of the road] shutting in the last of these houses, and opening a space of fifty or seventy-five feet before another villa or house of the same kind rose up, I turned my eye northward, and there in its niche also, a hundred yards from the road, stood the identical old parsonage, and the barn and out-houses, all as I had known them, and many times overrun them all. For I was familiar, tho' a boy, with the master-parson, rode his horse to plough the corn, and cut my fingers in reaping his rye, while he was a co-worker in the same labours upon the glebe which was allotted him, with a scanty salary of one hundred dollars lawful money, in return for the work of his ministry. I passed pleasant days in and about that quiet place, and I was delighted to find how the recalling of them delighted the youngest of my children.

“On the opposite or left side of the road there was in my time a range of lots or fields, where the parson grew his rye and potatoes, as other people did farther on; and then fields, perhaps a hundred and fifty yards, or it may be twice that in depth, gently sloped to a bank of fifteen or twenty feet in height, at the bottom of which, on its gravelly shore, lay Menotomy pond, perhaps a mile in length and half a mile in breadth, with an islet or two in it, and one especially, covered with pines and other evergreens, nearest to the northern shore. In these bright waters I used to bathe and fish in the summer, and on them I used to skate and fish in the winter,—fish through a hole in the ice, with a device that would tell me when I had hooked, tho' I was skating fifty yards away from it. And there we now caught glimpses of the lake, through the intervals between the villas or country

houses which occupied the fields and banks for three-quarters of a mile, and saw distinctly that pretty pine islet, between which and the shore I caught that memorable six-pound pike.

“The whole scene was changed enough to make it entirely different, and there were enough of the natural features remaining to make it the same, to me. The day was bright, the air cool and refreshing, the waters clear and rippling to the breeze, the villas and houses well formed, nicely painted, the lawns closely shaven, the flowers exhibiting their forms and exhaling their odours, and my delight, even amid the change, can hardly be expressed. Had I been alone, I should have been melancholy; with my companion, I was perhaps less sentimental than he was.

“We pursued the back road to Watertown, shutting in the western end of Menotomy Pond, and then meeting more and more houses, barns, and enclosures which my memory called up, and with so much accuracy that I was able even to point out the very spot where my ignorant young teeth had fleshed the skin of a green walnut, to get at the nut, and set my whole mouth on fire. The tree had been removed, and the burning too, from eye and taste, but the brain had preserved both impressions.”

Dr. Spring's descendants had parted with the house at Watertown, so Mr. Binney did not enter it. “The place,” he wrote, “has all its former rural beauties about it,—the prospect over the adjacent country the same; the fields, for nearly half a mile on each side and two miles in front, the same. Is it only when we are old that we cling to these old friends,—the fields, the trees that have known us when we were young, the houses of our youth, the abodes of dear friends that have left us, the memories of what they said to us and did for us? And do we, when young, pass them

away to strangers, content to forget and be forgotten by them? To an old man like myself nothing can be more strange. I declare with entire sincerity that if that place were at this time within reach of me, I would not let a day pass without endeavouring to possess it; and, still farther removed from it than I am, my children I am sure would thank me for acquiring it, and would hold it, I trust, as long as they could hold anything."

The next day was devoted to Hull. "I approached Hull with some misgivings. I expected, from what I had heard, to meet a little dilapidated old fishing-village, smelling perhaps of New England rum and fishing-smacks, with half a dozen taverns and a few trumpery shops, and the sashes stuffed in many places with old petticoats, as I had once seen at Marblehead. I know not how I got the idea that it was a noisy and dirty place, full of politics and chatter, with only half a dozen voters, and that it was a lamentably shabby place for a gentleman to have a grandfather and great-grandfather born in, and for the great-great-Scotch-English emigrant from whom the rest had proceeded to sit down in and breed up a posterity. I certainly somehow got the notion that though Deacon John Binney, my great-grandfather, was *some pumpkins*, having not only been the head layman of his church, but when his ten children had all grown up and left him, courageously and with determination aforethought married at the age of seventy-six a second wife, and rode up around the square-necked peninsula of Nantasket on horseback to Boston one day, and carried his wife down on a pillion the next, some thirty miles each way,—that though this deacon was worthy to be the great-grandfather of a very great man and a still greater churchman, rather of the high order, yet that if he and his Hull forefathers were not small potatoes, they had been raised in a very small patch. And

so much was undoubtedly true. But I also thought that it was a sandy and rather disagreeable patch, not much to be spoken about; and that it had been levelled down, and trampled down with fishermen's boots or bare feet, and had for this and like reasons a rather unsavoury smell. And it was with these presentiments that I approached the place. I rather think that I am indebted for them to some newspaper squibs let off against the great town of Hull and its seven voters, and rather more to some twists and turns of the nose when some of my Boston relations spoke of it. I was, however, determined to face the worst of it; and as I knew that I was coming to nothing myself, I meant, if it was so, to have the comfort of seeing that I had come from nothing in the beginning. Both are very likely to be true, with nothing in either the beginning or the ending to be ashamed of. It is the case with a great many of us, whatever we may think of ourselves or our ancestors. . . .

“Between [two low hills], on which there were trees, and enclosing fences, lay the quiet and very peculiar place we were to visit. We entered it on the eastern side, taking a very quiet and private road or street at the foot of the eastern hill, as it was on that road that the telegraph agent said we should find the graveyard. It was a beautiful morning, and this may have assisted the scene. The houses on each side, and well on to the middle of the space between the two hills or buttresses of the hamlet, had generally an open space before them, as well as at the side and beyond, with trees and small orchards, or plots for grass, potatoes, and the like. There were no buildings behind the front range, extending up the hill. The whole hill-side had grass or grain and trees, I think. All the houses were in respectable repair, of moderate size, neither very old nor very new. Towards the interior there were newer buildings, and one quite large and

commodious, newly painted but of plain architecture, with good lawns, trees, grass, and some arable ground in rye grain or Indian corn. . . .

“ We soon entered the graveyard; which was on a slope of the same eastern elevation, and at the very end of the town plot, which is nearly a round one, and closes at this point to a neck or isthmus, which drops a little and leads off to another part of what I have called the squash neck. Hull might very well be compared to a star port at the end of a breast-work.

“ We rushed, of course, to the stones of the graves that were nearest, for our time was nearly out, and we had to go back to our pier for the returning boat. Among the very first that we examined were several with the name of Binney. We had no time to copy inscriptions, scarcely to read them. There was one of a Molly Binney. Molly was the name by which my sister Mary, Mrs. Sargent, was called until she was a woman. Polly was the name by which, when I was a boy, I heard my mother called. Though a common substitute for the name of Mary in former times, the letters went thro’ my heart. My brother John once said, when his younger sister by two years revealed one of his peccadilloes to my mother, and she reproved him, ‘ Molly, you know, is a simple child.’ Another was a Reverend Spencer Binney, I think, and there were others. They were, however, comparatively modern, as late as 1810. The more distant ones, of which there were only a few, we had no time to examine. I hope my son may again visit the spot. It is more than one hundred years since my father was born in Boston, where my grandfather had resided several years, and, as I have been told, in Milk street, adjoining Mr. Eben Parsons, and near the Old South. No gravestone of his progenitors probably is extant; but I would give a great deal to find some me-

morial of the valiant old deacon; and I hope my son may look for it.<sup>7</sup>

“We returned rapidly, now taking the western road or street at the front of the western hill. (N. B.—I have called them western and eastern, when they may be really anything else. By eastern I mean towards the ocean, by the western, towards the interior bay.) We again passed the town-house and the pond, and looked around and through the interior of the town. We saw half a dozen men, two or three in a group in one instance, who seemed to be resting from their labours, and more occupied with looking at us, and noting our quick strides to and from the graveyard, than with anything else. We saw no tavern, smelt no rum, beheld no petticoats in the window-sashes, saw no fisherman’s boots, nor yet any bare feet. It had no bad odours, no bad sights, there were no appearances of decay, none I must also say of business or what is called life. It was, in fine, a rural hamlet or dell, pleasant eno’ to the eye, and beautifully shut in on two sides by the rising grounds I have described. How the people live, or support themselves, I do not know; they may cultivate outlying land beyond the graveyard. They may have other ways enough by the neighbourhood of Boston. The men have some reputation for shrewdness, at least in politics, for the saying in regard to elections is, ‘As goes Hull, so goes the State.’ But leaving all this to future inquiry, and my curiosity on this head is now greater than it was before, I must say that I never saw a place that I should have less objection to be born in myself, than Hull. Had I been dropt into it from a bal-

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<sup>7</sup> Note by Mr. Binney: “A few years ago I contributed to the erection of a monument stone over the ascertained remains of Deacon John Binney. This was at the instance of Charles J. F. Binney, of Boston, a descendant of Amos, the brother of my grandfather. July 9, 1868.”

loon, I should have said, 'I have got into a sort of Shaker village, not quite so thriving and regular and well to do as Lebanon.' I might have doubted of this after I had not been able to find a church, and certainly there was no steeple in the town, not even on the town-house. I should, at all events, have said that I had never before seen a town like it, and there are reasons enough for its being as it is. No one passes through it to anything else. No one goes from it to anything else, except by water, or perhaps to bring back a wife upon a pillion. It is entirely nondescript among municipalities; and now that I have seen it, I am quite glad that my first paternal ancestor was born there. I have no doubt he was autochthonous, and my lineage is as good as that of any other son of the earth.

"On our return to the hotel nearest the pier, I found that I knew the keeper of it, Ripley. He used to keep the Warrener at Springfield, and as he some years before told me that two maiden ladies of my name lived in Hull, and in what he called the Old Binney House, I asked if they or any of the name were still in the town, and he said that he did not know that there was any one of the name now living there. Yet those of the name have lived there nearly two hundred years. I possess extracts from the records from the time of John, the father of Deacon John, who was residing there with his wife Mercy in 1680. What that Old Binney House was, and where it is, I had not time to inquire. Certainly I will never marry a second wife before I have inquired a little further on the spot about the Old House and Deacon John.

"I shall make no comments upon either scene of our two days' visit. The marvel constantly before me during the last was that I could have lived for five years within a two hours' sail of the birthplace of my ancestors, and yet

never before visited it, and scarcely heard of their existence in it. My father's early death perhaps accounts for it; and I am glad that my own prolonged life has enabled me to supply this chasm to my children."

Mr. Binney's opinion of the suspension of Bishop Onderdonk in 1844 has already been referred to. In 1847 a canon was adopted providing that every sentence of suspension "shall specify on what terms, or at what time, said penalty shall cease." As this canon forbade, for the future, any sentence of indefinite suspension, a termination of Bishop Onderdonk's suspension was naturally to be expected; but his appeal for a remission of the sentence in 1847, and that of the Diocese in 1850, were unheeded by the House of Bishops, and even in 1853 a resolution of remission was defeated, though only by a single vote.

Under all ordinary circumstances Mr. Binney, as a layman, would not have undertaken to publicly criticise any action of the House of Bishops, but he felt that its maintenance of a sentence, which the Convention had provided should never again be imposed in any case, was an act of such harshness and severity as demanded a protest from those who had the well-being of the Church at heart. Accordingly he published a pamphlet containing a full statement of the case of Bishop Onderdonk. Though he saw fit to use the *nom de plume*, "A Member of the Church," his authorship was probably an open secret. Bishop Meade, and afterwards Bishop Hopkins, having undertaken a defence of the action of the House of Bishops, Mr. Binney published two pamphlets in 1854 in relation to the particular case, and to the law of the Church of England in regard to suspension, and in 1855 two more pamphlets on the law of suspension in the Primitive Church, demonstrating from the authorities that such a punishment as indefinite suspen-



sion of a priest or a bishop from his office, a suspension unlimited by time or conditions, was wholly unprecedented. He objected to the sentence, however, as much on the score of severity as on that of illegality.

I hold it to be sharper and more severe than any other sentence that the bishops can inflict. But for this sentence, I know of nothing that would have induced me to put pen to paper in this unhappy controversy. But I can never surrender my opposition to this while reason and life remain to me. I would not trust the exercise of the power of inflicting such a sentence to any living creature. I would not trust myself with it, nor those whom I most venerate and love. I would not impose such a sentence on any man for any offence, even for the greatest. It breaks the heart of the man upon whom it is imposed, and, unless he has virtue enough to require no punishment, makes him desperate. To certainty of the worst kind he can become reconciled; to uncertainty, never, from the very constitution of nature which God has given to him. It converts the judge from minister of the law into irresponsible arbiter. Instead of pronouncing as his sentence the whole voice of the law, and inflicting the penalty as due *ex debito justitiæ*, between the defendant and the public, it retains in the bosom of the judge just so much unpronounced as will leave him to be the dispenser of favours. Look at this kind of sentence as you may, with or without reference to anything that has ever occurred, every reflecting person must see that this is its necessary effect upon both judge and defendant, and if the law of all free countries condemn it as intolerable by freemen, how can it be thought profitable or tolerable in the Church? In my humble judgment the sentence should be expunged, without reference to anything that is past, it not being morally possible that any evils can result from such an extinction at all comparable to the evils of continuing it.<sup>8</sup>

It can hardly be doubted that the clear and calm statements of these pamphlets had their effect in changing the

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<sup>8</sup> Reply to Bishop Meade's second pamphlet, p. 20.

vote of fourteen to thirteen against remission of the sentence in 1853, to a vote of twenty-one to eight in favor of remission in 1856, when, to Mr. Binney's deep satisfaction, all Bishop Onderdonk's rights of public ministration were restored to him.

The year 1858 was for Mr. Binney the beginning of a long period of anxiety and distress, which was destined to end only in the deeper sorrow of bereavement. During this year his wife, just three years his junior, and who had up to this time almost equalled him in health and strength, was attacked by rheumatic gout, which, gradually increasing, made her more and more of a cripple until she was confined entirely to her room. Her great patience and cheerfulness, maintained even under very severe pain, undoubtedly helped her husband to bear up as he could not have done otherwise; but the ever present consciousness of her suffering necessarily clouded the happiness of his life from this time on. Prior to this, since he parted with his house in Burlington, in 1846, they had been in the habit of spending a part of each summer in the neighbourhood of Newport, or elsewhere to the north of Philadelphia, but after his wife's illness began Mr. Binney scarcely ever left the city, except for visits at the country place of his son-in-law, Mr. Montgomery, where Mrs. Binney was usually taken in midsummer.

During this year he wrote and published his short biographical sketch of Judge Bushrod Washington, whom he had known well for thirty years until the judge's death in 1829, and he also wrote the sketches of William Lewis, Edward Tilghman, and Jared Ingersoll, which appeared the following April under the title of "The Leaders of the Old Bar of Philadelphia," they having been the seniors, as well as the most prominent men, at the time that Mr.

Binney entered the profession himself. These sketches are probably the most finished of all his writings, casting a delightful glow, as of the genial sunshine of a peaceful summer afternoon, upon the eminent men of those days, which, though full of action, seem yet to have been days of quiet and dignity, a century and more ago, before modern hurry and rush had turned law into a trade and a lawyer's chambers into a sort of factory. He had not only seen all three of the "leaders" repeatedly in court, but had been fairly well acquainted with them, especially with Mr. Ingersoll; and by 1858 the personal recollection of them had become, as Mr. Binney put it, "pretty much an octogenarian perquisite of my own." He felt that Philadelphia had not dealt fairly with these great lawyers in preserving no memorial of them, and that the profession owed them a debt, which had descended upon him as the longest liver, and which, as far as any written memorial went, he alone could pay. It was to prevent their names from sinking into an undeserved oblivion that these sketches were written, and the fact that they are still read and valued shows that they were not written in vain.

There was also another motive for the sketches. Of all the social and political changes which had followed the downfall of Federalism, the almost universal destruction of the "good behaviour" tenure of the judiciary of the several States was the one about which Mr. Binney had felt most keenly. When, a few years later, came the attempt to break up the Union itself, that was, in his eyes, the only greater crime against liberty and civilization that he had witnessed, and he traced both offences to the same source. The excellence of the "old bar" had been, he held, closely connected with the "good behaviour" tenure of the judges before whom that bar had practised, and he wished, in

sketching the careers and characters of these "examples from the old 'good behaviour' bar of Philadelphia," to put into permanent form a protest against the demoralizing changes which had taken place in the judiciary of nearly all the States, and against any extension of that change to the Federal judiciary. Whether his words of warning have had any practical effect or not, they are at least of a character to make men stop and think.

The charm of these sketches is probably due to the fact that they are a personal retrospect, and not a work of biographical research. Apropos of this, Sir John Coleridge wrote to Mr. Binney's son as follows:

I must say sincerely that your father has been happy in his design, and not less in the way of dealing with it. His three heroes seem to have been remarkable men in their generation, and I can enter into the pleasure which your best men of the present day must receive from having an authentic record of them and a faithful sketch of their day presented by such a man, so remarkable and eminent in himself, who speaks from personal knowledge of both generations and periods, and who is so perfectly competent to understand and estimate in all particulars and respects the men he speaks of, and the two systems, as I may almost call them.

*Τῷ δ' ἤδη δύο μὲν γενεαὶ μερόπων ἀνθρώπων  
'Εφθιάθ', οἳ οἱ πρόσθεν ἅμα τράφεν ἡδὲ γένοντο  
'Εν Πεννσυλφανίῃ, μετὰ δὲ τριτάτοισιν ἀνασσει.*

Excuse my Homeric outburst. It smells perhaps of my Heath's Court employment, but it seems to me very suitable to your honoured father to compare him to Nestor, except, indeed, that I don't suppose he overflows quite as much in talk as that venerable chief (leader would have been a better word) appears to have done.

The Homeric allusion brought the following reply:

## 1859] WASHINGTON'S FAREWELL ADDRESS

It cannot but be a pleasure to you to see one American willing to breast the democratic tide which surges round him, and "stemming it with heart of controversy," not seeking in the least the approval of the present day, but content to leave on record after him words of warning which may one day find a hearing from his countrymen. And in truth my father's position becomes more remarkable with every passing year. Your comparison of him to Nestor does not strike his friends here as extravagant, but I think very few, if any, of them could have subdued the unmanageable name of his State to the demands of the Greek hexameter as skilfully as you have done at the expense of noble Pylos.

In September, 1859, Mr. Binney published his "Inquiry into the Formation of Washington's Farewell Address." He had been led to write on this subject in consequence of his friendship for Mr. John C. Hamilton of New York, whose acquaintance he had made at Saratoga some years before, and in whose publications of the writings of his great father Mr. Binney took a warm interest. From December, 1857, when the first volume of Mr. Hamilton's final work<sup>9</sup> appeared, frequent letters passed between them until within three months of Mr. Binney's death. To aid in placing Alexander Hamilton before the world in his true position as the greatest of American statesmen was an object dear to Mr. Binney's heart, and not the less so that it necessarily involved making plain the intimate relations existing between Washington and Hamilton, and their complete agreement and thorough co-operation in all affairs of state. Hamilton's connection with the Farewell Address had been the subject of a good deal of controversy, and it was necessary to settle it, once for all, as completely as the evidence

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<sup>9</sup> "History of the Republic of the United States of America, as traced in the writings of Alexander Hamilton and of his Contemporaries," by John C. Hamilton, 7 vols., New York, 1857-64.

permitted. Mr. Binney felt that Mr. Sparks, the editor of Washington's writings, had not treated the question fairly, and that, in view of the prejudice which existed on the subject, Hamilton's son would be at a disadvantage in attempting to present the truth, which was that the Address, while containing exclusively Washington's own views, the views which he had desired to express at that particular time, was, in its actual form, and to a great extent in its language, the work of Hamilton. Mr. Binney therefore, being wholly unconnected with the Hamilton family, took the task upon himself, regarding it rather as the discharge of a debt than as in any sense a favour to Mr. Hamilton.

I owe a vast debt to your father. I can trace all the light I have in regard to government to that source, received at that period of my life when what is sown, whether of good or evil, grows and spreads vigorously; and with this light came so much at least of sympathy with his honour, pure faith, manfulness, and all the standards by which he upheld them, that, beyond any principles of public government, I cannot but think I was permanently influenced by it. You do not owe me a tithe of what I owe to his public life and works; and all that I have endeavoured to pay you has not been a penny in the pound of my debt to him.<sup>10</sup>

The fact that Mr. Binney should have "turned to a purely historical and literary question, based upon a careful comparison of documentary evidence," at a time of the utmost political unrest, when the Union itself seemed almost ready to fall apart, has been called "a notable instance of the mental loneliness of a legal hermit." The writer<sup>11</sup> of those words cannot have been in possession of all the facts. It was just because Mr. Binney realized fully the threaten-

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<sup>10</sup> Letter to J. C. Hamilton, Esq., April 3, 1863.

<sup>11</sup> Hampton L. Carson, Esq., in Philadelphia Times, July 31, 1892.

ing state of the country that he turned to the words of Washington and Hamilton as to a chart showing the only safe course among rocks, shoals, and quicksands. To make that chart, the conditions under which it was prepared, and the men who prepared it better known was a most timely undertaking; none the less so that, as we see things now, no human undertaking could apparently have prevented the inevitable conflict.

In this essay Mr. Binney examined critically all the papers bearing upon the question; and the circumstances under which they had been written, and reached the following conclusion:

Washington was undoubtedly the original designer of the Farewell Address. . . . The fundamental thoughts and principles were his; but he was not the composer or writer of the paper. . . .

We have explicit authority for regarding the whole man as compounded of body, soul, and spirit. The Farewell Address, in a lower and figurative sense, is likewise so compounded. If these were divisible and distributable, we might, though not with full and exact propriety, allot the soul to Washington, and the spirit to Hamilton. The elementary body is Washington's also; but Hamilton has developed and fashioned it, and he has symmetrically formed and arranged the members, to give combined and appropriate action to the whole. This would point to an allotment of the soul and elementary body to Washington, and of the arranging, developing, and informing spirit to Hamilton, the same characteristic which is found in the great works he devised for the country, and are still the chart by which his department of the government is ruled.<sup>12</sup>

What Mr. Binney meant by the "soul" of the Address are the nine wishes for the future of the country, and cer-

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<sup>12</sup> Inquiry, etc., pp. 169-171.

tain statements immediately accompanying them, of which he wrote:

These are golden truths, a treasure of political wisdom, experience, and foresight, which, from the gravity of their tone, the depth of their sincerity, their simplicity, and the tenderness as well as strength of the concern they manifest for the whole people, make them in themselves a Farewell Address, as it were, from a dying father to his children. And they are Washington's alone, without suggestion by anybody,—Madison, Hamilton, or any other friend or adviser,—drawn from the depth of Washington's own heart, and if the whole Farewell Address, as it now stands on record, were decomposed, and such parts dispelled as were added to give the paper entrance into the minds of States and legislators, and to place it among the permanent rules of government, the great residuum would be found in these principles, an imperishable legacy to the people. They are the soul of the Farewell Address.<sup>13</sup>

Of the next two letters, the first was written while Mr. Binney was at work upon his "Inquiry," and the second just after it was published. It is clear that his work had not tended to make his opinion of Jefferson any more favourable than it was before, but rather the reverse.

*(To the Hon. D. A. White.)*

PHILADA., May 20, 1859.

It has delighted me to see your handwriting once more, and to feel the pulse of your warm heart. It will beat so while it beats at all, and will, I have no doubt, find its beats in unison with the measure of another sphere when it stops in this.

I received the Salem paper, and saw your hand-prints, and was of course gratified. But perhaps you don't exactly understand me as to this matter of writing and printing. I have written several

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<sup>13</sup> Inquiry, etc., p. 40.



things in the course of my life, some of them in the way of business, and some in the way of duty; and these have been pretty much records, and I have cared as little about the public reception as if I had printed copies of deeds. All other things that I have printed have been written from the heart to the heart,—from the heart of a sincere man to the hearts of a few I have loved, and I think have loved or respected me. Beyond these few I have cared for nothing, and I do not get what I want in their praise, but I get it in the reminder that they understand me and love me still. I cannot bring myself to have the least regard for the praise of the world, for I know what it is worth. I suppose I am too proud to be willing to divide anything with a crowd, many of whom, and perhaps the most, are drivellers. A good book, a book that is worth printing for the instruction of the world, is, always excepting primers and catechisms, the rarest thing on earth,—a mild day in the Arctic sea; reason and virtue in a democratic mob. I therefore hate book-making and authorship, and never can have anything to do with it. I do not say this in regard to what I have written, for that is not to be thought of as a collection by me or by anybody; but I say it to clear myself of the imputation that, by printing what I write from the heart to the heart, I have a secret aspiration to get into the category of authors. I print only to carry on my communion with a few externally; the larger communion is only to be carried on by the thoughts of the heart. If I could do it through a book that would live, that would be another matter; but that is not for me, and, indeed, has been and will be for only a very few. . . .

It would file the mind, my dear White, to write anything about Jefferson. I know him thoroughly, have read Randall's book, which is as much a fiction by colouring as the history of the island of Formosa and the Formosan language. You truly say that his *Ana* are his best history. I was consulted by Mr. Randolph, in regard to the copyright of his grandfather's posthumous works, and took a copy of the work, which I regard as one of the most precious in my library. If we could get Satan to write a history of his own life and actions, and especially some account of his opinions about the Holy Scriptures,

nobody of common honesty, I think, would want any further evidences of Christianity. But still many would quote him, and a few would swear by him. I was much struck, however, when in Congress, in Jackson's time, in finding, as I thought I did thoroughly, that if he was quoted or referred to at all, which was very rarely, the quoter never appeared to do it from his own faith, but only because he thought somebody else might have it. So I think it is universally now in the country. He will, however, become as well known as he need to be for his infamous malpractices in regard to Hamilton and Washington, by John C. Hamilton's life of his father, now in course of publication,—an authentic reliable work, not striking, perhaps, in point of style, but perfectly reliable and true, even impartial, for impartiality is often the severest truth.

*(To the same.)*

PHILADA., Oct. 15, 1859.

I thank you for your most kind and affectionate letter. The only regret that came with it, or rather that it produced, was for the recent disturbance of your health. What precious souls the precious *old* souls become to us, when God is pleased to spare us to old age. You and I have outlived many; and like the thinning ranks in a battle, I seem to come nearer to you every day, as others fall. I am almost literally without a comrade here, in the old file; but I thank God that He still preserves one or two in other parts of the field. We shall come together at last, and I trust lie in peace.

I send you by express a copy of the "Inquiry," which I will thank you to send with my respects to Dr. Peabody. He will not, I trust, place me in the category of authors, asking for fame or distinction. I wrote that paper with the single purpose of saving General Hamilton's son from going extensively, or perhaps at all, into the question in his next volume. A son cannot do this as a third person might, and there are points enough in it on which any one might impale himself if he did not keep a good lookout. I am glad you think I escaped pretty well.

I almost believe that Jefferson was a full incarnation of Satan.

## 1859] WASHINGTON'S FAREWELL ADDRESS

It has been in the course of writing this paper that I have come to learn, almost to know, that by or through his agents, access was had to some of Washington's papers, and that history has suffered by it. I think Mr. Sparks's paper on the Farewell Address was defective; but I shall never cease to be thankful to him for preserving copies of Washington's drafts. It is much to be feared that the originals have disappeared. That draft and Washington's letters of 15 May and 25 August, 1796, are immensely important documents for the history of that day. Mr. Randall has tried, I think, to embalm Jefferson with the myrrh and cassia of Washington's good opinion to the end; but these letters explode the pretension thoroughly, and the draft indignantly.

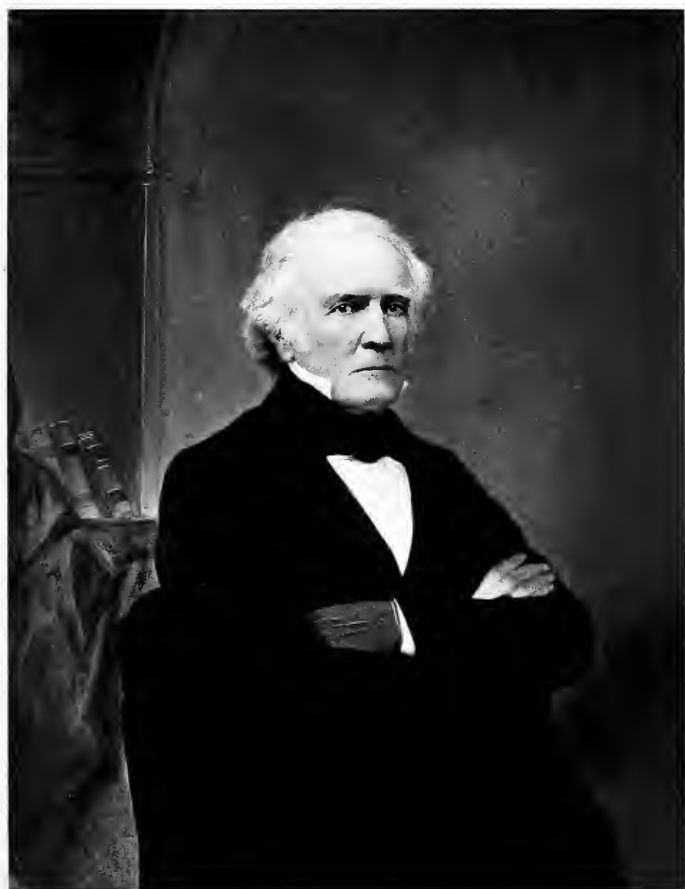
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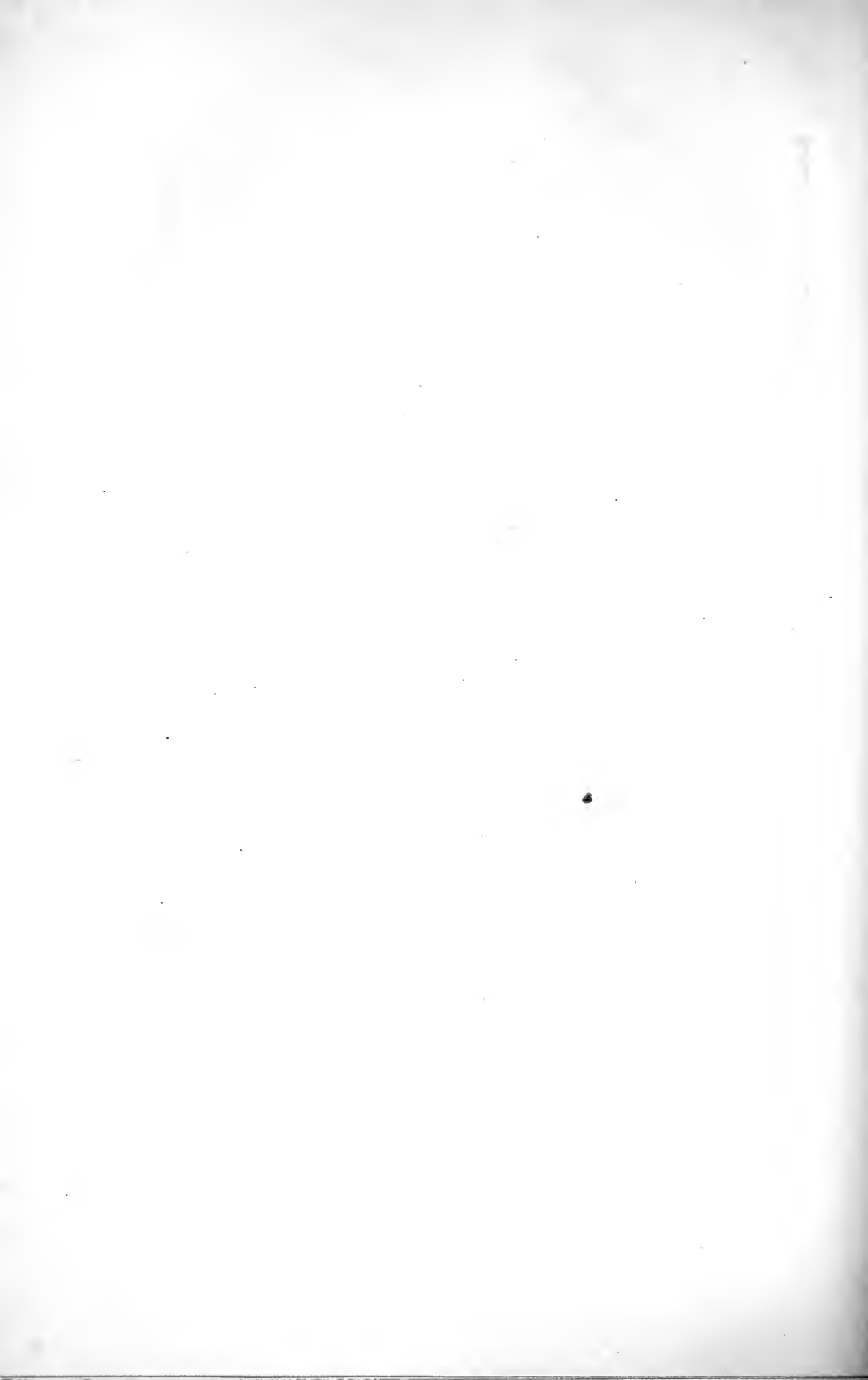
## THE EVE OF THE CIVIL WAR

(1859-1861)

**D**URING most of his life Mr. Binney kept up a large correspondence, and to its close, though his "love of letter-writing, once a very sincere, not to say a passionate one," had gone from him, he still had a few correspondents in whose letters he took keen pleasure. In writing to his intimates, he expressed himself very frankly about people and events; but, being averse to giving pain, and realizing that letters often expressed opinions which the writer might afterwards change, he was opposed to the preservation of private letters and from time to time destroyed those which he had received, as well as such of his own letters as were returned to him. Hence apparently not a single letter written to him is still in existence, and, while many which he himself wrote remain, most of them were written in the last sixteen years of his life. For that period they furnished the chief record, and the more important ones are given in the pages that follow.

When Mr. Binney's oldest son visited Europe in 1854, he made the acquaintance of Sir John Taylor Coleridge (then, and until his retirement in 1858, a justice of the Queen's Bench) and his son, afterwards Lord Chief Justice of England, an acquaintance which rapidly developed into very warm friendship. After his return he sent Sir John copies of some of his father's writings. Their perusal led Sir John to write to Mr. Binney himself, and gradually a cor-





respondence sprang up between them, ceasing only at Mr. Binney's death. Considering that the writers had never actually met, this correspondence was remarkably free from formality and reserve; but Mr. Binney was on his part predisposed to friendship with the judge, remembering very clearly the refined, thoughtful face and judicial bearing, which had strongly impressed him when he saw Coleridge in his place on the bench twenty years before. The first of the following letters refers to Sir John's lecture on "My Recollections of the Circuit," which was afterwards published in the *American Law Register* for March, 1861.

(To Sir J. T. Coleridge.)

PHILADELPHIA, 16 Nov., 1859.

I thank you for your most pleasing lecture, and for the little note which came with it. The picture in each was most agreeable. I need not be an *aruspex* to see that it is a good sign for England to have the writer of such things in her Privy Council.

I was not as well prepared for Sir W. Follett as for the others you describe, except Richardson, who was unknown to me; but Follett's faculties and dispositions are so well discriminated, that I think I understand him now. His must have been a genius for the *open* work of the bar, as distinguished from the chambers, and perhaps from the bench. I regret that I did not see or hear him when I was in London. I was informed by an acquaintance, one day, that Norris *vs.* Lord Melbourne was on, and hoped the next morning to go over and take my chance of bringing away a part of him; but when I came down to my breakfast, by no means a late one, I found the whole trial, verdict and all, upon the table. However some may sleep in that world, the judge certainly did not sleep over his work. Such faculties as Sir W. Follett's are not often the best for the bench; but they gather an immense harvest of local fame, and "consols," at the bar.

Much as I should have been delighted to go a circuit as an

observer, I have probably been more so in my chair, in reading your summary of several of them. I suppose some change must have come over them within thirty years, in *state* perhaps, but I hope not in the graceful unreserve of the bench with the bar, at proper seasons. We had a good deal more of both formerly than we have now. The popular election of judges is a horrible leveller; and both the bench and the bar seem to become more and more afraid of being distinguished as a *corps*. Pray hold on to your good old fashions as long as you can, even to the *wigs*, now you've got them. It is a wretched folly to part with any of the symbols, which are pretty much all that would deter many from ruining the substance. I wish England well for her own sake, but for ours fully as much. In the law, and in the administration of the law, we look to her constantly, and even go far beyond her when she sets an example of discarding anything which has been established. *There* is our danger, and yours also.

How much I was gratified by what you say of trial by judge *and* jury. A prejudice has been growing against trial by jury, in all parts of our country, where either the predominance of the popular will is great, or the courts are in the practice of leaving the evidence to the jury without a charge, and stating the law to them in an abstract or hypothetical way. This is the general course to the south of Pennsylvania. But *we* follow the English practice with great advantage, and have little thought of exchanging jury trial for anything else. It is only, however, as trial by judge *and* jury that it has its great value; and in looking at other countries, I incline to regard *this* as a special blessing of Heaven to the English race.

Pray send me again, my dear sir, with the consent of the Privy Council, such another lecture and such another note, telling me of the good old things of the bar and of the good new things also, when grandchildren are playing "hide and seek" among the bushes, and the grandfather in his study is working out "seek and shew" for the profit and refreshment of both ages. Your speech at Exeter on the subject of the Oxford Examinations goes demonstrably to the true foundation, both in science and in letters. The whole difference between finished and unfinished men depends upon the depths to which



boys are made to go in the elements between ten and eighteen. What is thoroughly mastered then is never lost, and no labour of the intellect afterwards can supply its place. Your uncle's insistent recommendation of the *Kα*'s and *γ*'s is the true way. I was not as well *birched* into it myself as I ought to have been, but I endeavoured to do better by my boys. . . .

(*To J. C. Hamilton, Esq.*)

PHILADA., 26 Jan., 1860.

. . . There are some remarks upon the [Farewell Address] Inquiry which you may not meet, as they are in a Massachusetts quarterly journal, called the *Christian Examiner*, for January, 1860. The paper is equally strong as the *North American [Review]*<sup>1</sup> in adopting my conclusions, but is stronger than any paper I have read in at least one of its expressions in regard to your father, whom it describes as, at the date of the Farewell Address, "the greatest man then living in America." These things may bring the readers of the day to a better acquaintance with your father, through your book and his writings. I regard him myself as the very first man of the age, and, indeed, of any age, in the supremacy of his intellect, upon all questions concerning practical government and policy; and in this relation I agree with the writer in the *Examiner*.

You may have seen the enclosed from the *National Intelligencer*. It is a poor thing, because while it affects to value the work,<sup>2</sup> it really undervalues it by your *manière de voir*. It is your manner of presenting, and not your manner of seeing, that gives the work its character; for when you present, others, if they have eyes, must see as you do—unless they are Virginians. And here is the difficulty with the *National Intelligencer*. They are so near to that atmosphere as to imbibe it in a strong mixture with other air, and the mass of their readers is altogether living in it; and their paper shows their

<sup>1</sup> The issue of January, 1860, containing a review of the Inquiry and of the Leaders of the Old Bar.

<sup>2</sup> Mr. Hamilton's History of the Republic, the fifth volume of which had recently appeared.

consciousness of it. I know little of S[eaton], but I like G[ales], who is thoroughly reclaimed from Jefferson, but not so thoroughly from Madison. When he is within the range of the Virginia influence his paper is feeble, but it is never so strong as when it is showing up the consequences of Democratic excesses. . . .

The only paper I wrote upon Chief Justice Marshall was the eulogy I read at the request of the city in 1836. I thought you possessed that; but if you do not, I cannot help you, and I believe it is out of print. The Supreme Court have tried, in the Dred Scott case, to put him out of print, so as never to have another edition of him; but I hope it will never be the doctrine of this nation that whatever the Supreme Court shall from time to time, backward and forward, say is our Constitution, that it is. When that Court has once settled its meaning, that we must abide by, or we can abide by nothing.

From 1860 to 1872 Mr. Binney's most frequent correspondent was Dr. Francis Lieber, a Prussian by birth, who as a young boy had fought and been wounded at Waterloo, and whose liberal views had compelled him to seek an asylum in the United States in 1827. He had first met Mr. Binney in Washington in 1833. He resided for some time in the South, but ultimately became Professor of History and Political Science in Columbia College. The correspondence ceased only at Dr. Lieber's death.

*(To Dr. Lieber.)*

PHILADA., Feb. 8, 1860.

. . . The safer principle to adopt in regard to the Dred Scott case, I think, is, that when the Constitution has been interpreted on a contested point, by the Supreme Court, and that interpretation practically followed for more than half a century, no contrary decision by the same court can have the least authority whatever. This is the specific rule that I would apply.

There is no Constitution without it. If the Dred Scott case is

followed, we have no unchanging Constitution whatever. It will be "*alia lex Romæ, alia Athenis, alia nunc, alia posthac.*" Cicero had no notion of such a law.

They talk of *overruling* the former decisions and practice. Whoever heard of such a thing being done by the same tribunal? How can it overrule its own body, confirmed by the decisions of Presidents over and over again, and by the laws of the Representatives of the people? The judges have done an awful thing, as I have already told you; and my word for it, it will not stand one moment if this government stands. You know how the Amphictyonic Council fell when it went into politics and decided corruptly between Sparta and Thebes. So it will be here, unless the Dred Scott case is brushed away. . . .

(*To J. C. Hamilton, Esq.*)

PHILADA., Feb. 8, 1860.

. . . I am glad the sixth [volume] is going to press, and shall look eagerly for it. You apprehend that it may be too full of the British treaty; but I regard your father's writings on that subject as his *capo d' opera* of statesmanship; and it is the defence of that treaty which shows his finish as a patriot as well as a politician; for it was he who should have made it, and would, if he had been sent, have made a better. He was the man, I think, who would personally have so satisfied the British Minister of the necessity and advantage of keeping the British and American governments together as a perpetual buttress against both despotism and licentiousness, that the treaty would have provided against all the causes which in the change of parties produced the war of 1812. The British contributed more to that war than they ought to have done; and they would have avoided this if your father had thoroughly removed causes of jealousy, as I believe he would have done much better than Jay. How we should have fared in his absence is the only question. His great papers on the subject of that treaty are those which first taught me the magnitude of his powers and resources. How long will you be in press with the sixth? I count the days. . . .

(*To Dr. Lieber.*)

PHILADA., Feb. 18, 1860.

. . . You never wrote a more incontestable truth than that generally democracy has nothing to do with liberty. The first movers of the Democratic party in this country may have thought that they were opposing monarchical tendencies, but it is more charitable than sensible to think so; and so far they may have had the perpetuation of liberty in view. But that fancy, whether real or simulated, soon passed away; and from the time the Democratic party attained power, which it has held continuously since, notwithstanding occasional losses of the Presidency, its aspiration has been for power; and liberty of action, of speech, of thought, has every day been more and more tramelled or impaired, until the word, in the general apprehension of the people, means power, and nothing else; and that is the reason why so many swell its ranks. It is not power in the government, nor in the law, nor wholly in the party; but it is power in the individuals who form the party; power to partake of the party strength, to seize on personal profits and advantages, to suppress or supersede those who are their rivals with the better claims of integrity, knowledge, and deference for the principles of liberty. You never said a truer word, nor was it ever more strikingly exemplified than in this land. For sixty years I have seen this accursed love of power, debauching the mature and the young, until at length a large portion of the anti-Democratic party has been more than half spoiled by it. Look at what it has done by the agency or consent of nearly all parties, in the overthrow of judicial tenure, in stripping the judges of power to appoint their own clerks or prothonotaries, in bringing every office down to the individual vote and claim of every man, in lifting up every man of every sort to clutch at every office or position that will increase his own power, and to calumniate and revile every one not of his party as an enemy of liberty. I am sick of it, and don't wonder that you are sad. I cannot ask you even to be of good courage, except upon the consideration, now very present with me, that life is but a journey, and that every man should try to do his

## 1860] READING THE FAREWELL ADDRESS

best in it, seeing that he is to account for what he has done at his journey's end.

I cannot write upon the Dred Scott case. . . . I doubt whether any man's opinion about it as a constitutional result is wanted or ever will be wanted. It is a political or party result. Nobody who reasons upon legal principles can want anything after Judge Curtis's opinion; and that opinion is just as safe for the South as for the North. The opinion of Mr. Taney, on the contrary, if there shall permanently remain anything upon which it can act, will divide this country into irreconcilable sections, while it dishonours the men of the Revolution, the men of the Constitution, and the Constitution itself. Popular sovereignty, in Mr. Douglas's meaning, is not a nonsense of the highest altitude while we have the Dred Scott logic of Mr. Taney to compare it with. Douglas is in the heavens, but not in the seventh heaven of reasoning lunatics.

There, again, I am getting a little lunatic myself, so farewell.

One result of Mr. Binney's book on the Farewell Address was a request to read the Address before the Councils of Philadelphia on the next anniversary of Washington's birth; and it was a very gratifying recognition of the value of his recent investigations to find a copy of his book upon the table, as containing the text from which he was to read. The weight of his fourscore years did not affect the firmness and expression of his voice, and as he read the wise and lofty admonitions, every one of which was stamped alike upon his memory and his heart, and whose warning notes sounded more solemn than ever amidst the threatening murmurs of discord and rebellion, destined soon to be succeeded by the clash of arms, he seemed, to quote from a journalist of the day, "to have become imbued with the spirit of Washington. He looked like Washington" himself. At the end of his reading the audience remained in expectant silence, and he at length said, "Thus closes the noblest compendium

of fatherly affection, patriotism, and political wisdom the world has ever seen. No words of mine are fit to stand beside it."

(*To J. C. Hamilton, Esq.*)

PHILADA., 16 May, 1860.

. . . But what shall I say in regard to the portion of Vol. VI. which you last sent me? I do not feel like a culprit, for some moral perverseness is necessary to constitute that condition; but I feel like a stupid, stolid, unthinking boy; for, having kept the roll in my fire-proof with all care until several days after the sixth volume had been received and read, I took them from their pigeon-hole, and, just as I do with my own proof-sheets after the pamphlet or book has been printed, deliberately and consciously put the roll into the fire and remained gazing at it until the whole was burned up, that no part might go up the chimney unburnt. I know nothing in my life like it, except one instance, when old Mrs. Boudinot, the good wife of Elias Boudinot, at an oyster-supper in her daughter's house, being entirely mastered by a large oyster which refused to yield to her knife, I most politely proposed to assist her, took the oyster from her plate, went at it, and kept at it for two minutes, while a lady next me talked me out of all recollection of the proprietor of the shell,—Mrs. Boudinot, I understood, looking at me all the time with both her eyes. When the parley with the neighbour lady ceased, I resumed my task, opened the shell, took a magnificent oyster from it, and, holding it under survey for a moment or two on my fork, deliberately raised it to my mouth and swallowed it!! Mrs. Boudinot's "admirably done," and the shout of the whole table of friends, who had taken in the whole scene, made very much the same impression upon me as the request in your letter to send the roll back. You can't have the shell, my dear sir. I swallowed the oyster and calcined the shell. What can I do? I verily believe your case is better than Mrs. Boudinot's, for you have a better impression; whereas she retained nothing but the visual impression of the oyster as it was departing forever from her. Will you please to beat me with a cudgel? I wish you could

## 1860] WASHINGTON'S FAREWELL ADDRESS

with all my heart; it would transfer the bruise from my behaviour to my bones. But I believe or fear there is no remedy for either you or myself. Forgive me. I will do better the next time. . . .

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 21 May, 1860.

The *Quarterly Review* for April arrived here last week, and your article, on the Leaders and Farewell Address, has been read with great satisfaction by myself, by my wife and children, and by several of our friends. The gratification has been universal; and not more, nor so much, I must say, from its bearing upon myself than on account of the kind feelings and artistic skill of the writer. Little as I anticipated, or, indeed, thought, of any foreign notice when I printed these papers,—even apprehensive of it when you informed me of your purpose,—I confess that I now feel a very high gratification. It is greater than I should have felt if it had been done by any other person, or in any other tone or manner. It is just *the thing* in all points that I should have desired if I had possessed the sagacity to desire it; and it enables me to establish your general rule, that a reviewer never satisfies a reviewee by averring conscientiously that I am the proving exception.

I concur even in your regret that Washington was not the author altogether of the Farewell Address, and have felt that regret for many years, though surrounded by a universal conviction among reading men that this was not the fact, and by a general indifference about it.

One of the motives of my publication appears plainly enough in the preface to it,—to remove an aspersion from Hamilton; and it was personally a very strong one with me. But there was another, which I could not have alleged publicly without some appearance of vanity or other weakness, and yet I do not hesitate to state it to you.

My mother's residence, when I left Philadelphia for college, was opposite to Washington's on the same street, and it immediately adjoined Hamilton's on the same side of the way; and the boyish admiration of both these great neighbours went with me to Cam-

bridge, and increased with me. They were never afterwards separated in my affection and regard; and when I came to know as I did, a few months before I wrote the essay, that the papers which proved Hamilton's material agency in the composition of the Farewell Address were, most of them, in print, and that the rest must be in a short time, and that thus all the facts could come out, I fancied that my affection for both would guide my pen more safely in the distribution of the parts than the superior intelligence of another person. From a want of this feeling, or from a great inequality of it towards the respective parties, other persons had already disfigured the case, to the unjust detriment of Hamilton; and I had a private reason for apprehending that a bias the other way might result in a similar injustice to Washington; and to meet and, as it were, deprive a subsequent writer of such a use of the facts, I even accelerated the writing and publication of the essay, more, indeed, than I ought to have done, as one of the notes shews, and, as I have become sensible, is shewn by many parts of it. I could write it over again with some improvements, I think; but I am told that I could not better manifest my warm regard for both parties, and especially for Washington.

Still, I feel the same regret which you have expressed; and had Mr. Jay and Mr. Sparks not written at all upon the subject, or not written what undoubtedly hurt the character of Hamilton, in a point in which he was remarkably superior to all the ambitious public men of his day, I should probably never have written a word about it. Mr. Adams's letter to Dr. Rush would have been no temptation to me, because his insinuation that all Washington's speeches as well as the Farewell Address were written by somebody else was too extravagant to make any general impression.

I thank you again, my dear sir, from my heart. Perhaps you do not know our country perfectly when you regret, for my own sake, that I have not been a judge.<sup>3</sup> In 1827, when Chief Justice Tilghman died, the bar of Philadelphia requested the governor of Penn-

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<sup>3</sup> This refers to a statement in the Quarterly Review.



## 1860] WASHINGTON'S FAREWELL ADDRESS

sylvania to appoint me chief justice of the Supreme Court; and I should have both willingly and thankfully accepted the office if it had been offered. But the governor was a Democrat, and I, as you rightly suppose, was not. He sent me a commission as puisne judge of the same court, which I declined. If Mr. Adams had been President when Judge Washington died, or, to speak more accurately, if Washington had died when Adams was President, it was his intention to nominate me for a seat in the Supreme Court of the United States. But Washington survived until Jackson became President; and then the Pennsylvania categories occurred,—I was not a Democrat and he was. I have been offered judicial commissions since that time, both from the President and the governor of Pennsylvania; but I declined them. The office I was ready to accept, chief justice of Pennsylvania, was not offered; and yet if it had been offered and accepted, I must have given it up in 1838, for I think that I could not have held judicial office for a day, except under the tenure of good behaviour. Upon the whole, I think it best for myself that I have not been a judge. . . .

*(To the same.)*

PHILADELPHIA, 15 June, 1860.

Pray do not write, or think, of wearying me with your letters, or of my wishing you to be anywhere but where you are, and as you are, while I live, to refresh me with them. I have no greater anticipation of pleasure than to see your handwriting on the back of a fresh letter, nor any greater enjoyment than to open and read it. I have reason to be thankful for a great many blessings, but this, of intercourse with you by letter, so entirely unprepared by me, seems to be so providential a supplement to my decaying enjoyments, by the Great Being who is over all, that I can refer it to no other cause. I have several very good correspondents,—one only remaining of my college classmates, 85, but still having a fresh heart and a fine intellect,—and I drop none of them myself; they have dropped only too fast by death. But your letters bring me back to friends who left the world thirty and forty years ago. I will not say by what char-

acteristics you recall them, but I repeat, do not permit yourself to think of wearying me with your letters. . . .

I am very glad that you liked Marshall and Tilghman, and that I did not so mar them by my account of them as to prevent your seeing that they were worthy of some commemoration. There were many men of their day who had a considerable share of their qualities,—the fruit, no doubt, of the circumstances to which you allude; but *they* were distinguished, with such men around them, by the large proportion in which they possessed the love of good, of justice, uprightness, order, simplicity of life and faith. I neither find nor hear of such men now in high place. They live, I hope, to be drawn out again in case of need; but the present training is, I fear, defective.

Dr. Moore, of our church, told me that when he first went to the Diocese of Virginia, after his consecration as bishop, he found that the gentlemen of Richmond, well educated and highly respectable men, on the outside of the church perhaps, were restive under the reading of the ante-communion service on every Lord's day. One or more of them begged him to let it be confined to communion days, and he asked Marshall what he thought of it. "Oh, give them the whole of it, always. If they don't like it now, they ought to like it, and I think so well of them that I believe they will like it in the end." And the bishop persevered, with good effect. One of the best proofs of his virtue is that Jefferson had a mortal hatred of him; and as far as Marshall's pure nature permitted, he reciprocated the aversion. When Hamilton, in 1801, exerted himself with all his correspondents to prevent the Federalists from making Burr President, and to give their votes in the House of Representatives to Jefferson, as the less dangerous man for the country, he wrote to Marshall asking him to use his influence to the same end. Marshall replied that he agreed to his arguments, but it was impossible for him to give his assistance. That was too much for him.

We are on the eve of a great struggle in the Democratic party, which threatens to divide the Democracy of the slave States from that of the North, the union of the two having for many years given

them a very pernicious ascendancy in the government. I hope you will excuse me for desiring that the breach may become irreparable. The Democratic Convention at Charleston, in April, failed to agree, and several of the Southern States seceded, and adjourned to meet at Richmond a few days ago. The Northern portion adjourned to meet at Baltimore on the 18th, Monday next. I shall not learn the result in time for this steamer; but if the Northern (Douglas) party shall hold on to their candidate for the Presidency, I will inform you of the result, and give you a little sketch of our parties, which will make American politics more intelligible to you, if you ever attend to them. An adherence by the Northern Democracy to Douglas will, according to present appearances, sunder these two great divisions for a long time,—I hope forever. The Democracy of the South is better disposed to good government in general than the Democracy of the North; but they are incurably vitiated upon the subject of slavery, and bent upon making it a *federal* institution, till it stands in the Senate of the United States in equipoise with the free States. . . .

(*To J. C. Hamilton, Esq.*)

PHILADA., 6 July, 1860.

I am quite obliged to your daughter for copying, in her clear and ladylike character of hand, the remarks from the *Daily Evening Traveller*. . . . My own impression of the work, with less than the depth in which it has gone in me, is obviously in the writer,—that the character of your father, his genius for government, the impression he made upon this government, both in Constitution and administration, in connexion with a pure system of political morals, is thoroughly brought out by it, and exhibited for permanent instruction and use. All future history of his period must be founded upon your exhibition of the epoch, in the person and productions of the first Secretary of the Treasury. Editors of papers may say what they please at this day of your party and personal predilections, but the day is nearer now at hand than I once thought it ever would be when, by your book, all men who form their opinions upon evidence and reflection will agree that your father's genius, talents, forecast,

political wisdom, and integrity are indelibly stamped upon the public acts of his time, in which he had the principal part; and that the good which remains to us was mainly his, and the evil what he laboured to prevent the enemies of good government from perpetrating. I value the work almost as much for the justice it has done to Jefferson as for the justice it has done to your father, and for the unimpeachable character of your evidence as for its conclusiveness. He tells his own history, Jefferson tells his own, Madison tells his, Adams tells his; but in Hamilton's uniformity—straight, elevated, always leading upward—and in their diversity—sometimes tortuous and almost always selfish, in one or two of them often mean and despicable—the truth comes out with equal relief and strength as to all. Though there is little formal portraiture in the work,—and I hope there will be none,—the real portraits in it are innumerable and excellent, from the great full-length of your father down to the shadows on the wall which are flitting at his side. I almost envy you the satisfaction of writing such an imperishable history of such a father.

There is no great probability that I shall again visit Saratoga, much as it would delight me to be your guest and to know your children who are about you. The foot of time has ceased with me to be "inaudible." I hear all his footsteps, and they are quicker and quicker, in nameless directions towards me and around me. None of them, however, alarm or shake me; nor do I fear that in their nearest approach to me they will disturb in the least my love of what is true, good, worthy, or beautiful. . . .

*(To the same.)*

PHILADA., 7 Sept., 1860.

. . . I have had but one political view of our parties all my life. The South first debauched our people to Democracy. Jefferson was not in this the leader more than the follower. It is inseparable from the institution of slavery. The masters have the spirit of ruling in them, as it regards their slaves, and will brook no rule but their own. The South has therefore promoted constantly the enfeeblement of the Federal government by interpretation, by internal policy, by

arrogance in the States. To this effect she has promoted Democracy to the North, and has combined as one State to lead the general Democracy, by gratifying the venal motives and passions of Northern demagogues, and reserving for her statesmen the higher sphere of directing the public administration. She has never been covetous of office, but always of ruling the appointing power. Her ambition is not unworthy of praise; but while she has cultivated the influence of men of talents and education at home, she has assisted the Democracy at the North to suppress such men, or to deny them all important share in the government. She has introduced a standard of politics and political morality which gentlemen cannot live by; and they must remain in their cocoons, therefore, or renounce their honest convictions by becoming incorporated with them.

And now, when for the first time the institution of the South, which can never go to the free labour Western States, nor come to the free North, has caused a split, which, if established, will give the truly republican men of the North and West the opportunity of bringing honest men and sound Federal politics—I mean sound and constitutional for the Union—into the general administration, the Bell and Everett Whigs—the Lord forgive them—come in to assist one of the Democratic sections to get the ascendancy, and, as it were, to drive the Republican wedge out of the log, that wedge, if it be good for nothing else, being good enough to split the Democratic log and, in my opinion, to keep it split. If Lincoln succeeds, the South will not think of going out of the Union; but whether they think it or not, they will go out of the rule of the Union, and that I most heartily desire. Both the policy of the South and the bearing of their public men are intolerable to me. I think their bearing must be so to every man at the North who wears a clean shirt preferably to a dirty one. And their institution will keep it so. They have got now to the very top of their brag, and those who now give way for fear of the Union, are the doughfaces of John Randolph, if there are such in the country.

Write me when you come back, if you go; and see me as you promise in the autumn.

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 20 Nov., 1860.

Your very kind letter of the 22 Oct. and the lecture on public schools, with the *Guardians*, have given me very great pleasure, and have been a banquet to my ladies. I am not insensible to the good opinion of such a man as your son, nor to such praise as his. There is apparent in both his reviews of Mr. Ruskin's last volume and of my pamphlets a conscientiousness which I regard as the only safe governor in life of either learning or accomplishments; and though, of course, I think him to have been in some degree influenced by personal relations in what he has said of me, yet I cannot help thinking rather better of myself because *he* has said it.

The paper on Ruskin is admirable. I have not been as partial to Ruskin's writings as some of my friends, and particularly a highly gifted son of my sister, who bore my name, and who died a few years since in France. He thought him a leader in an important revolution in art-criticism and painting, and that he was sure to leave his mark upon the age. I have little knowledge of painting, but a strong general love of it; and as it happens where this is the character of a man's condition in regard to the other sex, my judgment is probably not very discriminative. But being habitually averse to extremes, whether in doctrine or measures, as they generally pass into extravagances, I have paused at much that I have read in Mr. Ruskin. Our generalizations are so often imperfect, at least when we have not definitions or axioms to guide us, that we ought to keep our conclusions farther away from a universal result than he does, if we mean to be safe in taste, or politics, or, indeed, in anything. Your son has very skilfully touched Mr. Ruskin's extravagances, while at the same time he has shewn a lively sympathy with some of his remarkable beauties. It is decidedly an honest and fearless criticism, as well as candid and appreciating, and manifests great ability as a critic. It ought to do good to the writer; but there are some wits so nearly allied to madness, that there is no answering for the prescription beforehand. . . .

I regard [your lecture] as a treasure, and have read it again and again. I like every part of it, and differ from you in no particular where its functions are of a general nature, or even where they are special or limited, and I am able to apply them to the facts. How exactly do I adopt your appreciation of the boy-nature,—which we do not understand I think as well as we ought,—and your account of Arnold, so perfectly corresponding with what I had inferred from his letters and life, and your dissent from the attempt to mix professional training in schools and colleges with the proper business of education. The great basis of liberal education can be no other than the Greek and Roman classics, if we mean to *educate* men. There never has been any other basis since the revival of letters. It has made great men in every department, and will make them again. The objection to it has come from men who were merely professional men, and not *educated* at all. I know a number of only half-educated men who nevertheless have been benefited enough by it to be at an infinite distance from any such objection. I hope your lecture will do good. My great comfort in our comparatively crude state is the thought and hope that the men of England will hold up their old standard openly before the world, and that we may be encouraged and instructed by it to follow in that path.

You will have learned before this that Lincoln is chosen by the people; that is to say, the people have chosen electors who in the next month will give him a considerable majority of the electoral votes. The details would not interest you; but the people of Pennsylvania have given a larger vote for him than they have ever given for any President since Washington. It is much the same in New York and Ohio (the three great States of the centre, with from eight to ten million of freemen). South Carolina, upon this intelligence, has declared, so far as her Legislature can declare it, that she will secede from the Union, and has called a convention of her people to resolve upon it. Other Southern States are doing or have done the same. Secession by one or more of the States is an absurdity. The *whole people* (not the States) made the Constitution and Union, and no part or subdivision of the people can go off, any more than a

county or shire can go off from a State. It is revolution, and that only, or at least an attempt to make one.

If the purpose is to make a Southern union as a separate union, the universal opinion here is that such a nation could not subsist, for want of the necessary elements, and that the United States, from the geographical structure of their territory, cannot permit it to subsist. If Europe will let us alone, the whole, it is thought, will be an abortion. If any great State interferes for the South, it may be an awful and desolating convulsion.

I can suggest no probable cause for this, but the conviction among Southern politicians that a union with the Democracy of the West and North to give further extension to slavery is from henceforth hopeless, and that the subordination of the South to the general policy of the North and West must, from the increase of the West, be soon definitely established. This, I admit, is probable, and very unpalatable to the ambitious men of the South; but the consequence of its being established would be that the South would be more secure in the slaves they possess, tho' they would be disarmed of the power to send their slaves into the free territories, and would certainly be disappointed in the renewal of the slave trade. This last is with many the principal desideratum. We shall know what President Buchanan thinks about the matter in a fortnight.

I have, however, detained you too long. What I meant by genius, in referring to the countenance of your friend Patteson,<sup>4</sup> was the very thing you describe,—quickness and soundness. It is the genius of the bench, and, indeed, of the lawyer generally. The two are not often nor generally allied. The countenance, or, more accurately, the head and the eye, give the indications of it, and these were all I judged by. Upon the whole, I did not miss as much as I might.

Pray give my thanks and regards to your son. When he shall become Chancellor or judge of the Queen's Bench I am happy to believe that England will have a second judge of the same line, who

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<sup>4</sup>This refers to Mr. Binney's account (*supra*) of his visit to the King's Bench in April, 1837. He had sent Sir John a copy of what he had written at the time in regard to the appearance of the judges.



will have no fear of shewing that he is *ex corde* a Christian. What he has written at the close of his review in regard to some judicial appointments grieves me.

Lincoln's election was soon followed by the secession of South Carolina, and for the next five months the political sky became more and more overcast, until the storm burst with the attack on Fort Sumter. To Mr. Binney it was a period of patient waiting, the hope of a peaceful preservation of the Union growing every day more faint; but the instant that certainty was reached, though it was the certainty of a bloody war, his spirits rose with the thought that "all are now for *the United States*, here and everywhere northward and westward." <sup>5</sup>

(*To Dr. Lieber.*)

PHILADA., 13 Dec., 1860.

. . . We are left in a bad condition by the course of the President. Better not to have said a word, than to have said what he did. Complicated as the South Carolina movement has been with bank suspension here, and generally through the South and West, it has produced an apprehension and agitation that neither cause would have produced by itself. My prescription is calmness, firmness, almost silence and self-concentration, that we may get the souls of the people who think into the proper frame. I am averse to these meetings, here, there, and everywhere. Inactivity was never of more value; and as the difficulty cannot or will not be soon settled, there is the more time before us. If there is any *vis medicatrix* in a free government, it should be allowed a reasonable time to operate. No violent remedies can do good. I would tell the people, as I would tell an excited seaman in a storm, "Hold on to the sheet and mind orders." Hold on to the Union, and the ship may come down again on to an even keel without your doing anything. You cannot tell what will be the effect you will produce by almost anything you may do now. If the disease

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<sup>5</sup> Letter to Dr. Lieber, April 18, 1861.

proves incurable, you lose nothing by such advice, and you will be better able to provide for what may turn up.

South Carolina has discredited herself before the whole world, whatever may have been her troubles in the Union. Every State owes a debt to all other States, to act with dignity, and to make known the causes of discontent with her present condition. She must do this in no long time, or she will sink to the depth of Algerine or Tunisian degradation in old times. In the mean time I would leave her to herself, holding on to the Union, and working it with the means we have. A short time seems very long to the impatient and excited. A long time is short to look back upon if we have done nothing in the interval that we must lose both time and character in undoing.

The danger of the country in the emergency is the general mediocrity you advert to. But do such troubles occur except when there is no man who rises so much above the common level as to be generally seen? One man having general confidence throughout the country, and raised above the rest by qualities fitted for the time, though perhaps not the best, would settle it in a day. Such a man would have prevented it. We have none such now, it would seem; but we must not abandon the hope of having him. In the mean time let us hold to the Union and wait for orders.

(*To J. C. Hamilton, Esq.*)

PHILADA., 29 Dec., 1860.

. . . I am quite convinced that the President is and has been, from the election of Lincoln, false to the Union. Keith said at Columbia that Buchanan was pledged to secession, and must be held to it. What this means in full I cannot tell; but from the evidence thus far I regard it as meaning at least this,—that the condition of the forts should remain as they were, that is to say, perfectly inefficient for repression, or even for self-defence; and it is this pledge or policy that Major Anderson has so nobly disappointed. But what is to be done for this gallant man? Is he to be ordered back? Is he to be left without supplies where he is? Are we going to let this false chief leave Anderson to be starved out of Fort Sumter? Is not even a

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revenue cutter to be put at his service, for communication as well as support? I am told General Scott justifies him, as I can well believe. Cannot you give me some little private comfort on this and other heads? We seem to be getting into revolution by our very love of order. This has been my recommendation, you observe, to be calm, to keep things as they are, as much as possible, until a leader shall come from those who are entitled to lead. But if Major Anderson, with his men, is ordered back to Fort Moultrie, or he is arrested or ordered elsewhere, what then? Whatever may occur, I hope all schemes for calling the central States into conference, in exclusion of New York and the North, will be discountenanced and defeated. We must hold, I think, to the *whole* of the Union, in exclusion only of such slave States, whether cotton or boarder, as chuse to go off. Keep up the name, the prestige, and the old Union and Constitution, whatever happens. That is my faith, and I guess it is yours.

Happy, very happy, New Year to Mrs. Hamilton and all of you.

(*To Dr. Lieber.*)

PHILADA., 5 Jan., 1861.

. . . I was very much struck by the contraction which Mr. Calhoun's social theory had incurred through the influence of slavery, perhaps through his peculiar political position in regard to it. He walked with me one morning, in the year 1834, for nearly two hours on the esplanade of the Capitol; and gave his views to me, I suppose fully, as he had a full opportunity. I was a listener for the most part, and only interjected now and then a doubt or quære, or suggestion, to keep him to the line he first traced, or rather to show that he had my attention. He obviously considered society as consisting only of two classes, the poor who were uneducated, and doomed to serve, and the men of property and education, to whom the service was to be rendered. Regarding these two classes as discriminating the people of Pennsylvania as much as South Carolina, he said, emphatically, "[The poor and uneducated] are increasing; there is no power in a republican government to repress them; their number and disorderly tempers will make them in the end efficient enemies

of the men of property. They have the right to vote, they will finally control your elections, and by bad laws or by violence they will invade your houses and turn you out. Education will do nothing for them; they will not give it to their children; it will do them no good if they do. They are hopelessly doomed as a mass to poverty, from generation to generation; and from the political franchise, they will increase in influence and desperation until they overturn you. The institution of slavery cuts off this evil by the root. The whole body of our servants, whether in the family or in the field, are removed from all influence upon the white class by the denial of all political rights. They have no more tendency to disturb the order of society than an overstock of horses or oxen. They have neither power nor ambition to disturb it. They can be kept in order by methods which a republican government, as well as a monarchical or a military one, can apply. They have no jealousy of the other class, nor the other of them. They never stand on the same platform with the white class. They only require supervision and domestic discipline to keep them in good order; and such means are easily applied and become normal in the State. The white class is therefore left to pursue without apprehension the means they think best to elevate their own condition. Slavery is indispensable to a republican government. There cannot be a durable republican government without slavery."

This was the strain; and throughout the two hours he spoke of slavery as a beatitude of the governing party and the best also for the slaves. Not a single remark was made by him upon the influence of slavery on the condition of the poor and uneducated of the white class, nor upon white mechanics in the inferior class, nor upon education in regard to the slaves themselves, nor upon the diversified interests which constitute a civilized and enlightened community. The pillars of a republican State—and he only appeared to contemplate two—were a slave class and a property class, such white persons as were not within the property class being wholly ignored. They came into his consideration only as they acquired property enough to belong to the governing class, and then they got into the same category.

I doubt if Mr. Calhoun's views of society, republican society,

were not derived from this programme; and if his logic was always hard in defending such a theory of republican government and life, it is not clear that his heart was less hard. A man who makes slavery an essential element in his Utopia must be employed in narrowing the scope and influence of our noblest emotions, and in concentrating the powers of his mind upon a hard unsocial strategy, to defeat the insurrection of all liberal natures in the same community against so artificial a system. Such a heart must be hard.

In these sentiments of Mr. Calhoun I think I can read his entire political life; and is it not apparent that the present revolution in South Carolina is the fruit of such principles, and of none other? It seems to manifest an intense hatred of all other political institutions than just such as Mr. Calhoun exhibited to me as its elements, a wish to involve all others in anarchy, a doubtful sympathy with even slavery, except in the dual distribution of classes he postulated, and as uncompromising an hostility to slavery under any modifications that may tend to its emancipation or melioration as it does to absolutely free institutions. The French Revolution itself seems to have been more kindly, more tempered with a love for what was liberal, social, and exalting, at its commencement than this, where all that we hear or see is selfish, misanthropical, and hard, aspiring to exclude the whole American world from its communion, and to raise its empire upon negro slavery and nothing else. What a system of public morality is shown in the instant repudiation of public trusts,—the judge of his court and functions, the marshal of his official warrants and writs, the collector of his duties, transferring the property of the United States to enemies, the captain of a revenue cutter discharging his men and re-enlisting them in alien or enemy service, every one of these persons being sworn to support the Constitution of the United States; the State itself profanely absolving men from their duties and trusts, and substituting in the very post-offices and officers opposing duties for the momentary profit and convenience of the insurgent government. All this strikes me as horrible, blasting the character of the State and preparing an awfully black page for history, whether the insurrection succeed or not. Of the same nature

is the tampering with the Cabinet officers and by them, possibly to the blinding of the President, certainly to his infatuation, every step being as infamous a breach of trust as the robbery of the trust bonds from the strong box of the War Office. If the men are insane, there is an excuse for them; but otherwise there would seem to be a scorn of morality, or honour, even of decency, in the whole outbreak. Depend upon it, my dear sir, the apparent unanimity is deceptive, or slavery as Mr. Calhoun taught it has eaten up the heart of public or national honour from the people. I am prepared, on the contrary, to learn that terror does a great part, and either way what a result should it prepare us for?

*(To the Hon. D. A. White.)*

PHILADA., Mar. 1, 1861.

Your letter of the 26th Feb., which I received yesterday, gave me, as all your letters do, great satisfaction, mixed with some regret that your state of health did not permit you to write the whole of it yourself, and bringing a little reproach to me from my own heart that I, with better health, had not anticipated you by a letter of my own. I lose no time, however, in telling you how much I sympathize with you in the confinement your health makes necessary, and how thoroughly I concur with you in all you have said about secession and the remedies for it. The word is simply a political invention to drug the consciences of ignorant men, who have no love for treason. I do not believe that one single man of sound mind in the country, having the least tincture of jurisprudence, entertains a different opinion. The history of the Constitution, and the nature, end, and language of the agreement for Union, make such a right in one of the parties an absurdity, and the assertion of it, after seventy years administration, a gross fraud. A proof that there is a consciousness of this, even in those who assert the right, is in the immorality and dishonour of both the public and the personal acts which have been the consequence of the assertion in many flagrant instances. The code of public morality in the South has been turned topsy-turvy by it, and it is not wonderful that the poison has passed from public bodies to individuals, until we must blush at the baseness of men in every grade

of official station. It seems to be thought necessary only to have an official character of some kind under the United States to make it the cloak of rascality, such as men in decent society are pilloried for, or whipt at the post, or hanged, or shot. No truthful doctrine ever produced such fruits. I expect a universal demoralization, such as we witnessed in the French Revolution, if the stream runs its natural course.

All that is left to the government is, no doubt, firmly and calmly to deny and to resist it; to assert the obligation of the supreme law, and to enforce it, by every means at command which can reasonably promise success; and if the present means are so reduced by treason and fraud that present action can only be of minimum amount, then the duty is to apply the minimum power, and to collect the better means. Those who are opposed to this seek protection for their own wrong, or are indifferent to the overthrow of the government. If we mean to preserve the Constitution for any of the States, it must be shown that there is some virtue in it; and it will be seen to have none if, when violence is used against the law, we attempt to allay it by words, by flowers of rhetoric. The namby-pamby talk about civil war and bloodshed is the language of treason, open or covert. I want no more force than will maintain the law against the force that prostrates it; and thus I would let the law-breaker fix the quantum which the government should use. A Spanish story is not a bad one. A soldier in Madrid, being assailed by a furious dog, ran him through with the spear at the fighting end of his halberd. "But why," said the owner, "didn't you beat him off with the wooden end?" "I would," said the soldier, "if he had come at me tail foremost." I am for the wooden end, if it will answer. As to invasion, conquest, and all that, that is stark nonsense. What is wanted is to assist the Union men in the South to maintain their rights as citizens of the United States, in spite of the usurped power and terrorism.

But how has it happened that the loyalty of the people in the Middle and Northern States to the Union is so feeble? I will tell you, though you know it already.

The conflict which the Constitution was to undergo with the States was anticipated by Washington and Hamilton; and an im-

portant part of the Federal policy was to bring the government of the United States as much before the people, as an instrument of good to them, as possible. Upon this the Democratic party, led by Jefferson, fastened, as proof of a design to bring in monarchy, and so perverted the body of the country as to supplant Federalism and to destroy its general influence. Since that time the States have been the important power, and the United States subordinate, for all purposes of internal influence and welfare. Add to this our innumerable institutions of local authority, by which we govern ourselves in cities, counties, and districts, with hardly a reference to any superior power at all, and to none whatever beyond the State. Hence it is that we are Virginians, Pennsylvanians, New Yorkers, etc., and that, except when we find ourselves in foreign countries, we have no country of our own. Universally we assert that we owe allegiance, in the jural sense, to our respective States, instead of fidelity or fealty. In the South, where the heresy began, this allegiance to the State has been avowed as primary; and the only true allegiance we owe, that which is due to the United States, in return for all the protection we have against foreign states, against all other States of the Union except our own, and against our own when she exceeds the limits which the Constitution of the United States imposes,—this only true allegiance is placed next after that which they claim for their own State. A nation of more than thirty States, owing, the people of each State, allegiance to thirty different governments! And you see what it has made us. We are a people, for the most part, who have *within* their own territory no country. We have not among us the bond of loyalty to the Union. Even in the army and navy the separating State feeling exists to some extent, has already done shameful things, and no one can tell how far it will go.

In fine, my dear old friend, I fear the whole piece is nearly acted out. We may possibly, through the influence of private interests, patch up the Union again for a short time, though even this hangs in doubt; but a durable, homogeneous nation we cannot have, nor, whatever may be our other blessings, shall we or our children be part of a people who will partake of that blessing which the people



of England, France, and Germany enjoy, and which the people of Italy are striving to attain,—of having one fatherland. We often boast of speaking one tongue in better accents than the same amount of population in any other part of the globe. I devoutly wish that we could also boast of speaking with one heart, even if it were only of one thing,—our common country. I have some doubts whether national or public virtue can be grafted upon any other stock. How is it to exist where one part of our people graft into an olive, another into a crab, another into an alligator-pear? For I believe they raise that in some parts of the South. They certainly graft into as bad things.

But you and I, my dear old friend, though we may write and think about such things, have little more to do with them; thankful, no doubt, on both sides, that though we have not lived to see the hopes of our noble Federalists in the morning of our day realized, but their fears rather, we have nevertheless been permitted to partake of innumerable comforts together with our length of days, and to be unfeignedly thankful to Heaven for them all. . . .

The above letter ends the correspondence, as Judge White died on March 30th. Hearing of his death, Mr. Binney wrote:

I have now lost my warm-hearted and affectionate correspondent, whose purity and intelligence were a constant refreshment to think of, and whose tastes and opinions were more in sympathy with my own than those of any other man of my time. In many respects I have seen no person like him, no person so unvarying for so long a life, the delicacy and susceptibility of his affections continuing the same from my first acquaintance with him. The remembrance of him must be a store of sacred thoughts, as well as of honourable and wise principles to his descendants. . . . It will be to me while I live. Let those who were nearest to him know how deeply I respected and loved him, and how truly, through our long lives, the intercourse between us, which began in these sentiments, was without jar or shadow to the end.<sup>6</sup>

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<sup>6</sup> Letter to Rev. W. O. White, April, 1861.

(To Sir J. T. Coleridge.)

PHILADELPHIA, 5 Mar., 1861.

It would have corresponded better with my sense of your kindness if I had replied immediately to your letter of the 23 January; but, hoping that you would not misapprehend my delay, I postponed my acknowledgments, partly from the expectation of being able to say something more definite and encouraging on the subject of our public affairs, and recently, I grieve to say, from the severe illness of my son Horace, which has left me little else to think of. . . .

The condition of this country you appear to know in a general way; and I can hardly express my sense of the sympathy on this head which your letter expressed to me. Though the difficulties of our position have not diminished, and have in some respects been enlarged, we are at length in a condition to meet them with more regularity, and probably with more effect, by the peaceable inauguration of Mr. Lincoln as President, which took place at Washington yesterday. I send you a newspaper containing a copy of his address before taking the oath of office; . . . and I hope you will agree with me that it is a plain, sensible paper, expressing right doctrines as to the perpetuity of the Constitution, the unlawfulness of *secession*, and the duty of enforcing the laws; and in a kind temper, tho' with all requisite firmness, declaring his purpose to administer his office with fidelity, and with effect as far as the country shall supply the means. I should think, and this is the common opinion, that the paper has been written by himself; and that it is a proof of a plain, sound mind, free from any disposition to press what he thinks right with much rigour, or what he thinks wrong or plainly inexpedient, from mere fidelity to party; the best temper, perhaps, for our country. His reasoning upon disputed points, where I have examined it with attention, appears to be accurate, and his heart kind. He is generally regarded as a cordial man, not highly educated, but of good reasoning powers, and both calm and brave. On the whole, I like his début. The *people* will understand him; and that is a great point with us.

The history of this flagitious outbreak, for so I regard it, is

just beginning to be known. It is now pretty generally agreed that South Carolina has been preparing it for a considerable time past, and that it is the result of Mr. Calhoun's teachings upon the subject of slavery, assisted by the arts of ambitious men, of less ability than himself, who have filled the public mind of the South with apprehensions for their domestic safety, on account of the growth and temper of the free States, who are unfriendly to slavery. The grounds of alarm on this score have been grossly exaggerated by these ambitious teachers, to the intent of obtaining a general consent to disruption at the first favourable opportunity; and Mr. Lincoln's election has been the signal. Yet all this, as some of the leaders now acknowledge, was as to them a pretence. They assert that the personal liberty bills were of no concern to them; that the difficulty in fugitive slave cases did not touch them. They demand the separation because they regain free trade,—free importation of slaves,—a people of two classes, masters and slaves; and they proclaim that slavery with cotton will command the highest position for them among nations. I regard the personal ambition of a few, the prejudices of the mass, who have been practised upon by their own politicians, a vain and blind confidence in their own staple product, and an impatience of any government in which they cannot lead, the natural product of their state of society divided between masters and slaves, as the causes of the result. As to maladministration of the government, oppressive laws heretofore, or dangerous interpretations of the Constitution,—they do not and cannot pretend to it; for hitherto for half a century the Southern States, *pretending* Democracy,—and uniting with it in the North, though they now revile it with scorn,—have had everything their own way. They annexed Texas, they made the war with Mexico, they broke and repealed the slavery compromise of 1820, they kept a majority of judges from slave States upon the bench of the Supreme Court, they promoted that change of opinion in regard to the power of Congress over the Territories which had been acquiesced in for more than sixty years, and has been discarded by the Dred Scott case, which sanctions their right to carry slaves into all the Territories. They have hitherto ruled, and their

rule has come to an end by the growth of the Western States, and by the revolt of Democracy itself from their bidding. This I believe is the whole story. The mass of Republicanism in the Western States is made of what was Democracy, rising up to assist the superiority of free labour over slave. I am not sorry that Democracy has done one good turn in my long life, the only one I can recollect.

But the future of our country who can penetrate? I lean upon God, as you suppose, and there is no one else. We are divided here at the North, uncomfortably divided; for many of those I respect lean strongly to the South in all things, justify the secession, argue for its legality, deny that it is treason, justify the taking of our undefended ports, the robbery of the New Orleans Mint by the State, the surrender of revenue cutters by their officers, the surrender of military chest, stores, and arms by the commanding officer in Texas, the gross infidelity of the Secretary of War, the Secretary of the Treasury, and the Secretary of the Interior,—treachery to make us hang down our heads in very shame. Such is the power of party!

I will not go on, my dear sir. You may not have the facts, and I do but hint at them, and I may be thought to be writing a libel upon many of my countrymen. But I send you a very instructive paper, copied into the *National Intelligencer* from the *Charleston Mercury*, the great and rather able organ of the conspiracy in that State, in the name of one of its principal editors,—a protest against the prohibition of the slave trade by the new Confederation. You will probably regard it as a phenomenon in the history of hallucinations, but I send it mainly to verify some of my brief statements in regard to the causes of the outbreak. South Carolina has led in this matter. It seems to be doubtful whether she will follow the Confederation unless she leads; and there may be some good come out of this.

When I get a clue to the measures of Mr. Lincoln in application of his principles, I may be better able to foresee results. At present it is dark in many directions. It is, however, all clear *above* and, I thank God, *within*; and if I fail, I trust you believe that it will be in doing and in supporting what I believe to be right in His sight.

Your letter refers to your purpose of reviewing and publishing from your Journal some disquisitions on passages of the Testament which from time to time interested you, or seemed to require explanation. Pray do not defer it; and excuse me for adding, for *my sake*. My time is probably near at hand. Help me to redeem some that I have lost, not through worldliness, I hope, in its worst sense, but through arduous labours in a profession which, for several reasons, has severer labours than with you, from the condition of our society, the character of our education, and the multiform calls upon a lawyer in extensive practice. An American lawyer has been, in my time, doctor, surgeon, and apothecary all in one. But at no time of my life, even when in fullest practice, have I failed to recur to the blessed *Book*, and to have a keen relish for such disquisitions and notes as let me into the interior meaning of its passages. Pray help me to see more and better, in the twilight that is coming upon me. I have assisted to lead my sons and daughters in the same path. I too, while I read the Bible, try to *study* it, and feel myself, when our Saviour speaks, as if I were almost the central person to whom he speaks, "His eye fixed upon me, turn where I will." . . .

Pray write again. Your letters are a comfort.

(*To J. C. Hamilton, Esq.*)

PHILADA., 28 March, 1861.

. . . I thank you for the copy of Mr. Randall's letter. . . . The letter, if it was sincere, shows how much the spirit of advocacy will turn a man from all direct and colourless views, both of his subjects and of his adversaries, into the extreme of perversion and misrepresentation. I think he makes out Jefferson to have been a Christian; and if he had represented your father as a demon, I ought not to have been surprised. There are mean and low girds at him that are worse than this, and it was these which the most repelled me. His letter, however, shows that he had no true conception of your father's character. In some points he may have resembled Strafford, who was a great man. But your father had not the spirit of a tyrant, and a pretty bloody one, too, as Strafford had; and he had one con-

sistent view of his political obligations, which Strafford never had. Wentworth's ambition was unlimited, and his principles sat likely upon him. Your father's ambition was great, but it was controlled and regulated by his principles, which were the same, and pre-eminently true, from first to last. I put him far before Strafford in good faith and moral compactness; but I admit, nevertheless, that Strafford was a great man, and Mr. Randall no doubt meant the comparison for a compliment. I want no compliments, however, to your father, which rest on a misconception of his character. I am as scrupulous of it as Addison is said to have been of his conception of Sir Roger de Coverley, and would quarrel with any one as soon as Addison did with Steele, who should attempt even to praise him at the expense of any of his real attributes. Would to Heaven that we had him now as he was at the age of forty-five! If he were living, we might have two opinions of our proper course, certainly not two hundred, as we now have; and his opinion would have rallied all the men of virtue and sagacity in the land, leaving the unprincipled to unite, if they could, under the opposite banner.

We must, however, do as well as we can without him. I hear of a voice from the other side of the Atlantic that "the people of the United States seem to be either traitors or imbeciles." Let us be heedful on this head of public character. I would not turn on my heel for the choice of a government, if we lose that; and we are in imminent danger of it. I look upon the evacuation of Fort Sumter in this aspect. If that fort is given up in the spirit of peace, as it is called, it will be set down to the want of courage and purpose; it will pass for simple yielding, unless there be something in the manner that shall proclaim disdain for the false, and wear even in the evacuation the face of defiance. This notion of letting them go and carry off the fruits of their treason, as a brotherly arrangement, though it may leave one brother under the brand of treason, will place the other for years under the brand of cowardice. I tell you frankly, if I were President, I would bring them off under *fire*, though I would previously say, publicly, the fire shall be *first* drawn from the other forts.

XIII

THE CIVIL WAR PERIOD—HABEAS CORPUS  
PAMPHLETS

1861-1865

ON April 13 Fort Sumter was fired on, and it was evacuated two days later. On the 15th the President's proclamation was issued, calling for seventy-five thousand troops to put down the rebellion. Up to this time the feeling of Philadelphia had not been by any means unanimously loyal. Lincoln's majority over his three opponents had been only 2039, out of a total vote of 76,407, cast as follows:

Lincoln electors .....	39,223
Breckenridge electors .....	21,619
Douglas electors .....	8,434
Bell electors .....	7,131

The influence of party spirit and of commercial and social relations with the South was very strong. Meetings had been held to protest against any "coercion" of the South, a newspaper, the *Palmetto Flag*, was started to advocate the Southern cause, and Justice Woodward, of the Supreme Court, was not alone in the sentiment that "If the Union is to be divided, I want the line of separation to run north of Pennsylvania." Under these circumstances the supporters of the Union felt that Philadelphia must utter some word to show on which side she really stood, and to serve as a rallying cry for all loyal men, without distinction

of party. Accordingly, on the day the President's proclamation appeared, the following reply to it was drawn up by Mr. Binney, signed by a large number of influential citizens, and widely published:

The unparalleled event of the past week has revealed to the citizens of the United States, beyond question or possibility of doubt, that a peaceful reconciliation under the form of our Constitution is repelled and scorned, and that secession means, in the hearts of its supporters, both treason and war against our country and nation. We, therefore, the undersigned, loyal citizens of the United States, and inhabitants of the city of Philadelphia, responding to the proclamation of the President of the United States, hereby declare our unalterable determination to sustain the government in its efforts to maintain the honour, the integrity, and the existence of our National Union, and the perpetuity of the popular government, and to redress the wrongs already long enough endured. No differences of political opinion, no name or badge of diversity upon points of party distinction, shall restrain or withhold us in the devotion of all we have or can command, to the vindication of the Constitution, the maintenance of the laws, and the defence of the flag of our country.

Besides the original signers, many thousands of citizens put their names to this declaration of loyalty, and from the day that it appeared the adherence of the great majority of the people of the city to the Union cause could not be questioned.

As during the previous months of uncertainty, so throughout the years when Mr. Binney keenly watched the varying fortunes of the Union armies, his letters gave expression to the same hopes and fears which thousands of other men must have felt, especially men like himself, too old to bear any part in the great drama which was being enacted before the eyes of the world, but not too old to take



the deepest interest in it. Where, indeed, as happened more than once, he saw an opportunity to strengthen the hands of the government by the use of his pen, he gladly availed himself of it; but in general he made known his views only to the few friends to whom he wrote, and always with the admission that he was an onlooker whose range of vision was confined to what appeared in the newspapers.

While never yielding to despair, he was far from being always confident of the complete triumph of the Union, and at first he certainly regarded a separation as possible, if not probable. The mere extent of territory over which the old Constitution should be supreme was, indeed, of less consequence in his eyes than the maintenance, unimpaired, of the Constitution itself, and of the national traditions which centred about it, in the States which remained loyal. He was ready to devote all that he had to the maintenance of the Union, if that were possible; but if not, a free nation of Northern and Western States was still worth living for. Throughout the four years the existence of the war noticeably affected the tone of his letters. He strove to write cheerfully, but there was always "this overhanging cloud," which prevented his life from being, as it might have been "a day of the clearest and longest sunshine that any rational person could desire."<sup>1</sup>

He by no means approved every act of the administration during the war, but he held that at such a time loyal men should refrain from all public criticism. He had his own opinions and he expressed them in private, but during the whole war no word fell from him which could have added the smallest feather's weight to the burden of those who were charged with the weighty task of government.

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<sup>1</sup> Letter to Sir J. T. Coleridge, February 27, 1864.

(*To Dr. Lieber.*)

PHILADA., 20 Apr., 1861.

. . . . The trial has come, and we must abide it. Farewell to all public concern but that of maintaining the Constitution; and if it fails, which Heaven forbid! getting the same cut to sit well upon our smaller figure, and without the possibility of a rent or rip in the same place. I shall not probably live to see the end; but I shall breathe a prayer even to the last, that the people of whom my family and friends are to be a part will never again be fooled with the notion of a confederation of sovereigns, but belong confessedly and openly to *one nation*, however divided into States or shires, as much as to one God. . . .

(*To J. C. Hamilton, Esq.*)

PHILADA., 23 April, 1861.

I thank you for your Sunday letter. The best day consecrates the good deed. I am heartily glad to hear what you say of Major Anderson and Fort Sumter, and the evacuation. Taking down a flag after terms of evacuation have been settled is not striking it, nor lowering it, but simply removing it as a corps or army does on its daily march or change of encampment. I am glad also that he did not see Beauregard as a guest.

I saw your son Schuyler an hour or so before he departed with the Seventh Regiment. I had been out on my morning's walk of three or four miles, and was returning up the east and west street opposite my office, when I saw a blue army coat and cap in front of one of my servants at the office door, and then leaving and passing north. But the servant had descried me coming up the street, and ran to apprise him, and your son came up the street and got my cordial greeting. When we went into the office he said his wish was to obtain of me any book or work I might have in regard to the British attack on Washington, and I gave him the only pertinent one I had, which he thought would assist him. How much he resembles, in countenance and features, his grandfather, with more height, and very finely proportioned

height and figure too. It made my heart leap to recognize the lines of General Hamilton, which I remember from boyhood. The blood speaks in the prompt answer it has given to the call of his country.

. . . But I want a nation. I sigh for it. I pray for it: that there may be some power that we all love, honour, and obey, as the power that comprehends us all as one people and one nation, in fine, as our country. Recently we had almost none, or the feeling was so buried and covered up in our hearts that we were hardly conscious of it. Now the covering is off in this State and everywhere to the north, east, and west, and it is bursting forth as universally as the leaves of the trees and the grass of the fields. This may be the blessing that is coming to us out of this fearful war; and I have a confident hope that it will come and be established over much, and the best part, if not over the whole.

*(To Sir J. T. Coleridge.)*

PHILADELPHIA, 27 May, 1861.

I am much gratified by your letter of 2d May, which got to my hands a few days ago,—thankful for its sympathy, which, indeed, we deserve, and will probably continue to receive from the best of your people.

I agree that the dream of the perpetuity of this Union, as it was framed at the close of our Revolution, has been terribly disturbed; and perhaps we may never find it revisiting our sleep hereafter. Personally I have not been misled by the illusions of the dream at any time from my youth. Washington's Farewell Address shews how great he thought the difficulties of the problem were. Hamilton, near the close of his life, assigned fifty years as the term of the Union and Constitution; and that period has just expired. I have had the disadvantage of looking upon the course of events since the death of these great men, and have received as intimations of the approaching end the successive steps of what has been called the march of our prosperity,—the acquisition of Louisiana and Florida, the annexation of Texas, the conquest of Mexico, the purchase of California, the progress of our population westward, *and* the progress of democracy

in all directions. I had better have said *with* than *and*, for this has been the "poison in the pot" throughout; but thousands upon thousands of our statesmen have said, and perhaps have thought, that the increase of democracy was the best of our prosperity, and its sure foundation from the beginning. I have had no such faith; but have been a sceptic, in this only, from my youth.

This course of enlargement, pretty much in manner and form as it has occurred, was anticipated in all its features at an early day, with only one false conclusion,—that the development of the South and of slavery would secure the rule of the whole to that quarter, instead of inducing the South to secede because the growth of the Western States has prevented that rule. In all other points the progress was, I think, foreseen, and as early as 1803 led to a design by some eminent men from the Eastern States to divide the Union at that time. This was immediately after Mr. Jefferson's purchase of Louisiana. I have seen copies of the letters addressed to the gentleman who succeeded Hamilton in the Treasury Department, justifying this design, tho' I have never seen the replies. The Secretary was then out of office. Hamilton became aware of it, and declared himself hostile to it, even to the drawing of his sword against it; and it consequently fell through at Hamilton's death,—by the ruin of Burr, who was to have been an actor in it. It is an interesting fact, which I have learned from one of Hamilton's sons, that his, Hamilton's, estimate, just or otherwise, of the prejudice among military men against any one of their body who refuses to fight a duel overruled his better judgment, and led him to accept Burr's challenge, lest the military command might be lost to him on the side of the United States in the event of the projected revolt. Strange conflict which gave weakness the victory over both patriotism and morality!

But I do not at present entertain the opinion that the Union and Constitution will not be, to at least a great extent, maintained, notwithstanding the outbreak of the slave States.

The free States are at present as unanimous in maintaining both, against this secession, as it is possible for twenty millions to be; more so probably than twenty millions ever were upon any question

whatever. The assault upon Fort Sumter started us all to our feet, as one man; all political division ceased among us from that very moment. Private relations with the South have been put aside, no doubt with great regret. There is among us but one thought, one object, one end, one symbol,—the Stars and Stripes. We are to a great degree at present, and will shortly be throughout, an armed nation. We have the whole naval power of the country. We have nearly all its money at command. We know that we shall be both degraded and ruined unless this government is maintained; and we are not so much embittered at this time (as we hope we shall continue) as to be unable to make the combat as respectable in point of humanity as war between public belligerents can be. Most of the seceded slave States are much divided. Eastern Tennessee, Northern Alabama, Western Virginia, are wholly in favour of the Union. Kentucky has expressly refused to go out. Tennessee is still balancing; Missouri cannot go. Maryland, now that her mob has been suppressed, speaks and acts the language of Union, and she is encouraged to it by the presence of Pennsylvania forces in Baltimore and overhanging her western counties, which at the same time are known to be faithful, and will continue so against her secessionists if she can. Delaware is thoroughly Union. It is the slave-selling and slave-working parts of the South that have alone desired to break away,—by no means all of these, nor any considerable part of them but through delusion, venality, or terror. How can the North and West withhold their effort to suppress the terror which has enchained so many? It is their sacred duty under the Constitution. We have, therefore, both duty and right to confirm us in the effort. It will, I have no doubt whatever, be strenuously made. We have no reason to doubt, from either the purposes we entertain, or the motives which actuate us, or the means we shall apply, that God will help us.

Some of the writers for the English press have but an imperfect knowledge of the necessities of the free States when they argue that the slave States should be allowed to depart and make another nation. We are large enough, they say,—and that is true enough, though nothing to the purpose. The North and West cannot *conquer*

them. That also may be true, and yet nothing to the purpose. *They* will conquer the North and West and destroy the Union, if they can bring about what these writers recommend. Consider, Louisiana and Florida were purchased to make the union of the West with the Atlantic States possible. They hold the Gulf of Mexico and the river Mississippi under their control, if they are left as they claim to be. Texas bounds us and turns us in to the South on the western side of the Gulf. Our intercourse with the Pacific States, all faithful to the Union, lies over the Isthmus of Darien. How can any part of the West continue in union with the North, or the Pacific be united to the Atlantic States, if an independent power holds this control? The question for negotiation is, Which shall be the master of the gates of entrance and exit to the North and West? Was such a question ever settled by negotiation? The States on the Mississippi and the Gulf must be in union with the North and West, or be commanded by them, or the West must fly from the North. This is an old question. I heard it argued in 1797, when we had Spain to deal with in regard to these waters; and not a man South or North but held the opinion I express. It was from our weakness then that we did not conquer them; and to this single end—of maintaining our Union—we bought them afterwards, which was better; but their importance to the union of North and West is just what it was. Great Britain knew what their value to the Union was, when her forces endeavoured to seize New Orleans in 1815.

In fine, my dear sir, I do not say we can *conquer*. I do say that *mere* conquest would be an absurdity in our relations if we could achieve it; for the Southern States would become Territories again, if anything, and go into the old connection, to go into revolt a second time. But we may *subdue* the revolutionary violence which has got the upper hand; we may *hearten* the friends of the Union in those parts to vindicate their own rights in the Union; and if we cannot do this, we may detach Louisiana, Florida, and the river portions of Mississippi, and Arkansas. If we do not, then I admit our dream of union and our national existence in its present form is gone. And such a shame, dishonour, degradation, in the sight of all the world!

God forbid that I should live to see it! Three hundred and fifty thousand masters of slaves—not more—breaking down the power and hopes of twenty millions of freemen, for the most part the descendants of Englishmen! You recollect Cowley's burst, in regard to Cromwell's usurpation:

"Come the eleventh plague, rather than this should be,  
Come sink us rather in the sea.

\* \* \* \* \*

In all the chains we ever bore,  
We griev'd, we sigh'd, we wept, we never blush'd before."

This has been a long ramble, my dear sir. I have no time to make it shorter, for I am deep in a commission to provide for the poor families of the mechanics who have become volunteers.<sup>2</sup> Willingly do I devote any powers of mind or body which remain to me, in this truly sacred cause. My son Horace is better, but the typhoid so batters the fort that it takes a long time to repair the breaches. Mrs. Binney, I thank you, is in good general health, tho' entirely restricted to her chair and couch.

The rebellion of the Southern States soon raised the question of the President's legal right to imprison suspected persons without commitment by a magistrate, or admission to bail, or a speedy trial. The first instance of such an imprisonment was apparently that of John Merryman, of Maryland, charged with treason in connection with the destruction of the railroad leading to Washington, in order to prevent the passage of troops. He was arrested on May 25th, and taken to Fort McHenry, near Baltimore. The next day a Habeas Corpus was issued by Chief Justice Taney, himself a Marylander, and with at least a very tender regard for the people of the seceded States and for the supposed legal rights of all who sought to aid the rebellion. The writ

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<sup>2</sup> Mr. Binney was vice-president of this commission, and for a time quite active in it, until he was able to resign his duties to younger men.

was served, but General Cadwalader, in command of the fort, refused compliance, pleading the authority of the President to suspend the privilege of the writ in such cases for the public safety. The chief justice then issued an attachment against the general for contempt of court, but the marshal was not admitted within the fort. Taney then announced that the marshal had a right to summon his posse and arrest the general by force, but that this would evidently be useless, and he soon afterwards contented himself with filing an opinion to the effect that under the Constitution the President had no power of suspension without express authority of Congress, which had not been given. A copy of this opinion was sent to the President, whose many worries it may have served to increase a little.

A constitutional question, affecting the government's power to deal with treason, naturally interested Mr. Binney very deeply. He referred to it in a letter of June 24 to Dr. Lieber, and again at greater length two days later.

(*To Dr. Lieber.*)

PHILADA., 26 June, 1861.

My last must have arrived in New York on the morning on which your last announced your appointed departure for Washington. It contained nothing to be remembered, but a reference to a very good paper in the *National Intelligencer* of the 22d, on the subject of Habeas Corpus. It is a paper of that class which gets the mind out of a rut. On some subjects the ruts of the mind are so deep that it is the hardest thing in the world to get out of them. It requires a pull beyond ordinary strength. This of Habeas Corpus as a universal, ever-continuing right, is one of them; though one cannot see any good reason why, if enemies or rebels suspend the operation of all other laws, a military commander should not suspend or resist the Habeas Corpus writ to bring about their restoration. I may make a remark on the clause in the Constitution, which the writer of the



article does not make,—viz., that it is not in time of war that the suspension becomes allowable, but only in time of invasion or rebellion,—violent outbroken opposition to law,—facts which locally displace the operation of the laws. If the enemy and rebel do this, why should he be protected by Habeas Corpus in his liberty, to repeat it to the end? In fine, the whole question, as I think I told you, is whether the commander-in-chief, in times of invasion and rebellion, may not make military prisoners, and keep them prisoners. As a war right, it seems to be very clear, when one gets out of the rut. . . .

I am not without some apprehension of the approaching Congress. I am quite certain that the question of comparative strength and endurance between the North and the South is to be settled first and before any word of compromise is uttered. Projects of conciliation, come from where they may, and with what menace or cajolery they may, must be tabled, not committed, not debated. I know of nothing Congress can do to promote a good reconciling conclusion so much as to harness the Union as it remains with good strong materials, in the shape of men, arms, munitions, and finance, against the rebellion. They will be tenfold more wise than Felix in putting off compromise and conventions to a convenient season. I am sure St. Paul would be of my mind.

My estimate of the Cabinet, as yet wholly unformed, will wholly depend on the scope of the measures they shall recommend. If the President and the Cabinet are men, they can have it as I would have it, if they wish. On this will depend whether we are to have the one division or many; and if we have more, we shall have no lawful way of reducing them, as we have in regard to the one. Farewell hope, from that day! She will be gone from the box.

I know no man at this time who is fit for the office of chief justice. The man to fill it must appear before he is named, must be a messenger, or *vox clamantis*, as Marshall was, and as Taney was not. The drowning honour of that court is under the water; it must be plucked up by the locks. I would have the office kept open for the man. If the next chief does not lift the department up, it will go to the bottom.

My regards to Professor Bache. I fear his coast survey may suffer, but I hope not. It would best comport with my views if the rule of administration for the regular status of the country were changed as little as possible, and war against rebellion to be taken as a part of our daily vocation indefinitely. I believe we can live under it, at this end, and under nothing else.

(*To J. C. Hamilton, Esq.*)

PHILADA., 17 Aug., 1861.

Not a line has come from the pen of either to the other since the—the—the—great mistake.<sup>3</sup> I shall never call it by any other name; nor do I think it possible to imagine a greater, for the name of Scott, for the success of our country at home, or for our character abroad. I would give one of my old arms to have prevented it. Though it has not shaken me in any of my opinions in regard to the necessity and perfect justification of our measures of war to the last extremity against this nefarious conspiracy, and of the continuance of them to absolute exhaustion, I have not, I may say, had one comfortable day since the event. I was apprehensive of it before it occurred. I apprehended it the more for the causes which I saw were leading to it. I could hardly perceive how an escape from it would happen; and yet I recoiled from the thought of it, as a thing that could not happen while Scott was commander of the army.

It is of no use, however, to write about it. The thing is done, the mischief, great and incalculable, is done—the greatest of all, of which the marks are beginning to show themselves around us, around you, and everywhere, the outspoken combinations for peace, which is surrender, submission, discomfiture, disgrace. Cannot you give me some comfort? Is it possible that at such a time as this the same unruly popular will which has caused our decline in virtue for thirty years is to rule us in this war, to take the strength of our military leader, so that he cannot have his way, where his own judgment is so

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<sup>3</sup> The forward movement which ended in the disaster of Bull Run.

clear, but must yield to the ignorant, wilful, perverse and often corrupt voice of the press, the politicians, the office-seekers, the office-holders? Since I have lost my confidence in Scott's will, his determination to have his way when he ought to have it, and have seen substituted for it the clamours of newspapers, and the ten thousand variant wills of the multitude, I positively am in the air, and have no foothold whatever. I think precisely as I did upon the whole question. I have not changed in any single particular, as it regards either end or means, but I feel as powerless as a paralytic, and I am beginning to impute to others what I feel in myself.

Are we in Pennsylvania to be made as effete by political party as Maryland is? Is New York to be the same? I verily believe there is a body of men among us who are intent upon fixing upon New England the whole responsibility for the Civil War, and of reconstructing so as to cut her off! Sublime conception! Can we get along against the Saracens, with these eternal cavils about law, Habeas Corpus, and the Lord knows what, while these men are as much above law as the Five Points ever were? . . .

(*To Dr. Lieber.*)

PHILADA., 2 Sep., 1861.

Every system of disaffection to the government, as far as I have detected it, proceeds from the Democratic leaven. Republican, Bell-Everett, American, old Whig, are generally true. It may be so also with the Douglas Democrat; but the Breckenridge Democrat, a blending of politics with Southern relations, is detestably false; and these men should not be permitted to speak their treason above their breath. The President wants no more opinions from anybody in support of his power. Let him act firmly, as he has acted within the month past, and the acquiescence will be universal with all whose opinion has the least tinge of patriotism or integrity.

There seems to be no way of establishing a good paper among us, except by raising a sufficient capital from men of congenial opinions in regard to most public questions. A half-million of dollars would do this, and a hundred men might, I suppose, be found in New

York, possibly here, to furnish the sum, and to make a body of directors to superintend the editor. The editor and writers must be paid *ad valorem*, and the subscribers must be willing to put the whole fund afloat, to establish the paper. If it cannot after that establish itself, and maintain itself, which is all that should be looked for, it is because our soil has not been worked long enough to bear this kind of plant. The main difficulty is in selecting the hundred, but from various points I think it might be done, and if some one versed in American politics would write down the heads or points of congeniality in general terms, but sufficiently marked to guard against deviation to any considerable extent, the thing might be easily tried.

I should like to see you so employed or engaged. You have the principles, the knowledge, and the power of writing. In general our papers belong to parties, and parties in the main are as poor things as the papers devoted to them. . . .

I should be glad to see an historical exhibit of the progress of nations in the usages of war. I am satisfied that all the improvements have proceeded from increased civilization, and that while modern wars are generally shorter and more decisive than they formerly were, they disturb less than they did the progress of general civilization.

The Saracens of the South go to every possible extent of ferocity and devastation, as in Missouri at this time; not so much in destruction of life as in devastation of property. Loss of life will come next. Hear what Beauregard writes, that he will in a short time make us pay for all our devastations of Southern soil! I should be glad if we had a firm foot upon it anywhere; if only to show the South that devastation of either life or property does not belong to the government side of rebellion, or the present age. Generally the masses go free and the few guilty chiefs ransom them. After the contest is ended, the country gets sooner into joint, the less has been the dislocation. If we get to hanging each other, and burning or pillaging each other's houses, we shall go back two hundred years in civilization, and never perhaps in this continent return to the recent condition.

But is it not clear that what the South shall persist in doing the North must do? This is to me an awful necessity, if it shall be one.

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 3 Oct., 1861.

I am heartily thankful to you for your letter written at the close of the month of August. Though this horrid war brings anxieties upon all or most of us, and some very painful ones upon myself especially, I am not so engrossed by them as to forget my "English correspondent," or to pass without regret an interval of any length without hearing *from* him or *of* him. The last interval has appeared rather long, as neither myself nor my son Horace could answer our family inquiries in regard to you and yours for some months. We feel as if we had a sort of family connection with you,—are very proud of it,—and mark its interruptions with something like the same uneasiness which has attended the *closure* of intercourse since June last with our blood and marriage relatives in South Carolina and Louisiana. This reference will shew you the nature of some of the troubles that are upon us; and, I say it with great truth, the letters of yourself or your son to me or to Horace will be an alleviation of them. I must add, however, for myself, that not being of a very anxious temper, and having a firm confidence in the Providence of God for the ultimate well-being of those who trust in Him and endeavour to honour Him, by striving to do right and to be right, I habitually suppress anxiety, and generally succeed when I find myself in the path of my duty, as upon reflection I think it is marked out to me.

Upon the subject of this Civil War, as other nations are entitled to regard it, of this wholly inexcusable rebellion, as we call it, I have made up my mind thoroughly, as all the moderate men I know have done; and this, after cutting away as much as possible everything that could disturb my judgment. Let me note my conclusions as in a *brief* for argument in a court of enlightened conscience.

1. That the secession was the work of political ambition, aiming to overthrow the Constitution of the whole country, and not merely

to collect the present slave States under a separate constitution. The danger was and is, to make the institutions of the country conform to the interests of slave labour, its indefinite propagation and establishment.

2. That this end did, in the judgment of those whose scheme it was, require military means, to be used offensively, and to the whole extent that should be necessary to suppress opposition.

3. That the field of their work was not to be *within* the slave States, but beyond them; and consequently that the war was to be upon *us*, while their slaves would be uninterrupted in their labour; and their first assault was to be upon Washington to unseat the Constitutional government, and to give the prestige of this position to their new government.

4. The frauds in their progress, whether by aid of the Secretaries of War, Treasury, Navy, or Interior, during Buchanan's time, and with his connivance, and whether by taking the funds of the government, or its arms, or assisting to break down the credit of the Treasury, are mere aggravation; but they marked the dangers I impute to them as clearly as their instant uprising, the seizure of forts, and the creation of an army and its incessant progress towards Washington during Buchanan's administration, when they *knew*, and had known for months, that the Lincoln administration, whatever its designs, could do nothing to injure them if their own Senators and Representatives appeared in their places in Congress.

These, my dear sir, are my convictions; and the result with me is that the free States had, and at this time have, no alternative but to oppose them by military force until they are *repressed*.

I think that in England a great many have not sufficiently considered our case. There are several stages in such a contest, and there are considerations appropriate to each. In all of them the honour of a people, an inestimable possession, I need not say how composed, is of first importance to ourselves and in the eyes of the world. It can never be sacrificed by a nation to save property or life. In some of the stages, this being safe, political considerations may more safely rule.

We are now in the very first stage, and the contest of our government is for *life*—for the liberty of exercising any *free* choice at all as to the future. We must repress them, or we perish as a nation. Can the sagacious statesmen of Europe advise us, *at this time*, to offer the Southern slave States what they have asked—or anything—*now* that their armies are clutching at the seat of our government? The thing is simply *impossible* to a people that have any sense of honour, not to say any attachment to their Constitution. Mr. Dallas said truly in his late speech, “Fight we must,” and not a man in the free States, who has any sense of national honour, thinks otherwise. If we cannot repress them, no time will remain to us for anything but to *submit*. But if we can repress them, and shew that they cannot gain their object—which is the destruction of our government—by arms, there will be time for reason, for compromise if practicable, for anything that will conduce to permanent peace and concord.

I expressed, in my last letter to you, some of my own views, now very common, of what the free States could not agree to and live united among themselves. But this was all speculation. At present we have before us not the superinduced, but the original purpose of the slave States, to destroy our freedom of action by military force, and the practical question, *Shall we fight or yield?* I must say in regard to this, my much respected correspondent, that I have no *anxiety*; not that I have no apprehension. I shall meet the worst conclusion that present resistance by arms can bring us to, without having uttered a word of compromise to men of such designs, demonstrated by such overt acts, as calmly as I should, I hope, meet my own death in the most sacred cause. . . .

I beg my regards to your family. The state of your health disturbs me; my own is reasonably good; Mrs. Binney’s, as it was.

During the succeeding months Mr. Binney continued to think and read on the subject of the Habeas Corpus, and to discuss it in other letters to Dr. Lieber. On August 26 he mentioned the prospect of his publishing his views on the subject, and further correspondence ensued. By the latter

part of November he had substantially completed the proposed paper, as the following shows:

(*To Dr. Lieber.*)

PHILADA., 22 Nov., 1861.

"My tidy logic!"—that is to say, my short-legged logic, I suppose, my three-legged syllogistic, my short-gown and petticoat logic, with a white apron before it, to hide spots on the under garment. Very well, I am more than satisfied. But you are to have in a short time a specimen of my long-legged logic, perhaps not tidy, perhaps with spots not hidden, visible enough to eyes like yours, the whole figure smelling perhaps of apoplexy. The archbishop, I think, had no notion of it,—perhaps few archbishops have. I am sure that I, who am no archbishop, have not. Still the smell may be on the garment. I assure you it has passed through the fire, and if the smell of smoke is not on it, there is a miracle.

That Habeas Corpus letter<sup>4</sup> you wot of, I burned, and out of its ashes comes a phoenix, forty-six feet high, that is to say, feet as long as one of my quarto pages of manuscript, and looking rather superciliously on the ashes of its poor mother!

Let me say, however, that it is a block of the old chip, and no other wood, only rather fuller of sap, and wanting a staff to support it less than the *mater cinerosa*. The staff of many others, if they get to see it, will doubtless be laid on its neck and shoulders. For be it remembered that the question of Habeas Corpus is no longer a question of Constitution or law, but has become a question of Lincolnism.

Still I think my bird sings a new song, or rather she sounds a new note. I confess I think it is musical, and I hope you will. It is a *breve*, the longest note in music, and for that reason, no doubt, called a *breve*, by a sort of antiperistasis, a figure that makes water

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<sup>4</sup> A letter to Dr. Lieber, written in July or August, containing Mr. Binney's full statement of his views on the subject. It had been returned to him, on his own request, for revision.



boil in a man's mouth if he stands long enough upon ice, a pretty figure certainly,—the ice, the man, and the boiling water! If the world hears of it, they may think I or my bird is that figure. You shall see and say. . . .

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 4 Dec., 1861.

I have received with the greatest satisfaction your delightful letter of 21 Oct., and the shorter one of 14 Nov. In regard to the extract which was sent to the *Guardian* I have not a word to say. I may trust myself implicitly to you; and can only be thankful for your using anything I may write, to promote a kind and just feeling in your country to my own. Perhaps I would have omitted the first paragraph of the extract, as it speaks more of myself than I should have done, if something in your August letter had not drawn it from me. The extract was printed in our newspapers from the *Guardian*, with an editorial remark which indicated the authorship in a way that my friends did not misunderstand.

I send you by the steamer the message of the President to Congress, thinking you might possibly, or perhaps your son, wish to see the whole of it. It is a pretty good photograph of the writer,—not handsome, nor even genteel, but plain speaking, sincere, and rather sensible, we think. The character of this President has come to be received by nearly all among us (the free North and West) as very frank, unaffected, and honest. I recollect no President, who was so little known when he came into office, who so soon, and in times of vast difficulty and very general self-seeking, as well as of great devotion to public service, has acquired a very full confidence of the people for these qualities. He seems to be an entirely sincere and honest man. He does not appear to think much of himself, but is disposed to give all he has, and is, to the country; and to shew himself always in his own clothes. Perhaps he might get handsomer; but we have been so much annoyed by pretensions in some of our Presidents, that we are not sorry to see a little more of the undress or natural style. I do not know how it will strike England and France, who shew such high

breeding in matters of this kind; but we like it at this perilous time, when suspicions of the integrity and plain-dealing of that officer would produce great disturbance.

The message is very discreet in regard to foreign relations, of which it says nothing in particular. It has therefore nothing to explain. The correspondence, which is to some extent given to Congress, will, when it shall be printed, give us a better notion of their position. In one matter, the arrest of a British vessel in June, upon the ground of breach of blockade, and afterwards released, the message is distinct in recommending compensation for the delay, and upon a right principle.

Two or three rather important events on our side will have come to your knowledge before this note can reach you. The landing of our troops in Port Royal, at the junction of Georgia and South Carolina, and the bombardment and capture of the forts, is quite important, as transferring active operations of the Union to Southern States on the coast. The seizure of cotton and the burning of it by the planters to avoid seizure are not much to my taste, but they are in character with the operations by and against the secessionists elsewhere. We may suppose and regret that such things will go on, on both sides, from worse to worse.

Another event is the taking of Mason and Slidell, ambassadors seeking assistance, from an English ship by an American ship-of-war. For personal reasons, the two men, Mason, of Virginia, having been for many years very obnoxious to the North, by his movements and speeches in the Senate, and Slidell, an old offender in the same way when he was in the Senate, and an egregious *filibustero* against Cuba, have been welcomed with great joy to one of our forts. I had rather they had gone free. The question between the countries will be settled by the two governments in the usual way. Many of our people are rather anxious about it, but I have told you I am not in that way. I hope we are right, and if we are not, that is to say, if the President thinks we are not, I have no doubt he will say so, without fear of anybody at home. It is desirable for us to have as few questions with any foreign government as possible during this rebellion; but they

will come, and if our first aim is to get the truth, we shall probably get it, and then we may abide it with safe conscience either way.

We are likely to have a very troublesome, perhaps a dividing, question among ourselves as to the slaves who come into our lines. Various opinions are broached already in Congress, as to emancipation, confiscation, and the like; but they have had no development as yet. I really hate that word confiscation, and have hated it through my life. It is a word that carries war and a spirit of rapine over into peace, and makes peace a mutilated and suspicious intercourse between the nations who practise it. Virginia already has unrelentingly passed it against the property of Northern residents. The United States have done nothing of the kind except as to ships or vessels held in part ownership by South and North. I hope we shall keep our hands free from this stain; but I fear.

God bless you, my dear sir, and your family, and preserve to you and them, and your country, the united condition in which you now live.

The reference to the Slidell and Mason affair, in the above letter, is very guarded. As a matter of fact, when Mr. Binney first heard the news of their being taken, he shared the general satisfaction, but literally for a moment only. While he was speaking about it a doubt seized his mind. He ceased talking and withdrew to his office. After consulting his books on international law he returned to the drawing-room, where some of his family were, and said, regretfully but decidedly, "We shall have to give them back."

*(To J. C. Hamilton, Esq.)*

PHILADA., 21 Dec., 1861.

There has been such a gap between our letters, probably by my fault, that I am determined to fill it up by wishing beforehand a "Merry Christmas" to you and to all your family. And I do it most heartily, not in the vulgar sense of laughing or causing laughter, but

in the old sense of sweet, pleasant, agreeable, coming from a thankful heart. We have a good deal to be sad about in contemplative moments, no doubt,—on public accounts, many, on private accounts, some, as everybody has; but in the main you and I have many causes of thankfulness, looking at the whole scene, causes on the return of that day to make the heart leap up and the cheerful voice to chaunt them. Therefore I again wish you a “Merry Christmas,” and have no doubt you wish me the same.

I cannot be persuaded that England is going to kick up a serious rumpus about our taking Mason and Slidell out of one of their commercial vessels. I think she must be too proud to make a pretext for war, or to pick a quarrel with us, when she has no real ground. Her character, her prestige all over the world, would be terribly stained by it. In this country she would never regain it, nor retain it anywhere. She cannot afford to do that. Her ministry may be pressed by a *vis a tergo* to make a fuss and bluster a little at home, but that is easily modified abroad, and the whole matter toned down to the footing of negotiation and explanation.

Halleck, I think, is your son-in-law. I like his course both first and last. That is to say, his washing the slave matter from his hand at first was good, and his readiness to execute orders was good afterwards. I detest the whole work of confiscation, and would do nothing with slavery, except as a war measure under the commander-in-chief. Slavery is dead for all the harm it can do to us. Let us deal with it with some regard to the Union proprietors at least, and to the slaves themselves. The end, if it comes, and when it comes, will arrange matters on the proper footing. . . .

Early in December the paper on the Habeas Corpus was complete, and Mr. Binney was able to critically review his work. The seriousness of the question naturally made him cautious, and his regard for the Constitution did not dispose him to favour any loose or merely popular construction of its language. At first he thought he might have gone too far in that direction himself, that the judicial spirit in which

he desired to treat the matter had been overcome by the wish to make out a case on the government's side. He realized that he was entering an arena of conflict, and foresaw practically all the objections which would be made to his view, at least all those which would deserve any attention. Ultimately, however, he condemned them as too narrow and technical, and returned to his original intention of publishing. The pamphlet bears date December 23, and appeared very shortly afterwards.

Some weeks after Merryman's arrest the Attorney-General, Mr. Bates, had given an opinion to the effect that the President, as the executive department of the government, sworn to "preserve, protect, and defend" the Constitution, necessarily had the power to arrest and imprison the suspected accomplices of insurgents. As to the Habeas Corpus clause, he said, "Very learned persons have differed widely about the meaning of this short sentence, and I am by no means confident that I fully understand it myself." Whatever that clause might mean, however, he was confident about the President's power to detain suspects, so much so that he thought it "not very important whether we call a particular power exercised by the President a *peace* power or a *war* power, for, undoubtedly, he is armed with both."

In the *North American Review* for October, Ex-Chief Justice Parker of New Hampshire, at that time Royall Professor of Law at Harvard, had argued that the existence of martial law involved the right to detain persons suspected of complicity in insurrection, and that, as Fort McHenry was under martial law, the writ could not reasonably command obedience there. Other writers had held that the President could suspend the privilege of the writ by virtue of his military power as commander-in-chief.

To Mr. Binney's mind the Attorney-General's position

was wholly unscientific and untenable, especially as the Constitution had provided expressly for the suspension, under certain specified conditions. He agreed with parts of Judge Parker's article, but considered that his views as to martial law went a great deal too far, and that it was more dangerous, more inconsistent with the whole spirit of the Constitution, to sustain the suspension as an exercise of military power or of martial law, than even to deny all power of suspension without express authority of Congress. The privilege of the writ of Habeas Corpus being a purely civil privilege, he regarded the power of suspension as a civil power, just as completely so as the power to arrest. The exercise of the power of suspension, being confined to times of rebellion or invasion, was of course intended to aid the suppression of rebellion or the repelling of invasion, and was in that sense supplementary to the military power, but still entirely distinct from it. He therefore held that the power of suspension must result from the Habeas Corpus clause alone, and that the only question was whether the Constitution intended this power to be exercised by the President or by Congress.

As this question had to be answered by inference only, any convincing solution of it required very close reasoning, and such Mr. Binney's reasoning undoubtedly was. He pointed out that the suspension contemplated was not a suspension of a Habeas Corpus act, such as Parliament had at times effected, but merely of the privilege of the writ in individual cases, so that the English authorities did not apply; that when the clause was before the Constitutional Convention it had been proposed to provide for a suspension by the Legislature, but that this was not agreed to; that the words of Chief Justice Marshall, in *Ex parte Bolman*, relied on by Taney, were altogether *obiter* and of no

authority; and that the actual suspension of the privilege in any given case would have to be the act of the Executive, whether Congress authorized it by statute or not. His conclusion was that the Constitution, having stated the only conditions under which the power could be exercised, rendered Congressional action superfluous, and that the intention was to place the power in the President's hands.

From the nature of the case no conclusion could be stated, on either side, with positive assurance. The most that Mr. Binney could say was that it was "both Constitutional and safe to argue" that the power was so placed. He could not have expected to command universal assent, and the publication of his views was the signal for a pamphlet fusilade on the part of those who differed from him. Some of these writers were outspoken in support of the energetic suppression of the rebellion, while others were well-known advocates of the right of secession. Some deserved to be answered seriously, but this can hardly be said of all. A few of their pamphlets had already appeared before the date of the following letter.

*(To Sir J. T. Coleridge.)*

PHILADELPHIA, 17 March, 1862.

I thank you cordially for your letter of the 12th February, and for the suggestion of your doubts upon the reasoning of the tract which my son sent you. No man, I think, can write from conviction or persuasion of the truth without being ready to welcome, from any quarter, and especially from a friend, suggestions of reasonable doubt or dissent; and it was from this persuasion, tho' rather unwillingly, that I wrote, and after inviting the close attention and criticism of some professional friends, at their solicitation, printed the tract upon the "Privilege of the Writ of Habeas Corpus under the Constitution." I did not rely implicitly upon this solicitation, for I knew how deceptive such expressions are in general; but having their

concurrence in the answers which I thought might be given to certain objections which I stated to them, among which is the first suggestion in your letter, the state of the public mind induced me to print, without answering them by anticipation, and to leave them, and any others which might appear, to a reply. The first and principal doubt of your letter has been in one instance suggested and argued here, tho' not with as much force; and I shall give my answer to it, if my life and health are spared, and will take care that a copy of my answer, whatever it may be, shall be sent to you.

I had doubts myself whether the profession in England would be sufficiently familiar with a peculiarity of our Constitution on which the answer to the objection turns, to avoid making it; and stated the peculiarity in a recent letter to your son, who was so obliging as to write me, in return for some book or tract which my son sent him with my inscription on the title-page. I will now say no more about the objection than that Chief Justice Taney, in his opinion on Merryman's case, Mr. Justice Story in his Commentaries, and every writer whose opinion I had previously seen, had deduced the authority from the Habeas Corpus clause, and not from any general power of suspension in Congress, of which that clause is a mere restriction. I am persuaded that no such general power exists, or, before the clause was introduced, existed in Congress, and that the clause is not merely restrictive, but conveys all the power that either Congress or the President has upon the subject. Certainly the clause gives the authority indirectly and by inversion; and a reason for it may be found in the condition of the General Convention, a body as full of divisions, jealousies, devices, and artifices to carry their party points as any Congress we have ever had, and perhaps more so. The course most favourable to the end proposed by the mover of the clause was to disaffirm the suspension power generally, which the State rights party hold to be the condition of things under the Constitution, if the exception was not affirmed, and to affirm the exception indirectly.

The limitation of the legislative power under the Constitution (nothing being vested in Congress but what was therein granted), the principles asserted in the Declaration of Independence and in the



Bills of Rights in the States, the character of the Articles of Confederation, and the Preamble to the Constitution, shew to the *American* mind that Congress would have had no authority from its granted powers to impair personal liberty discretionally, or its securities by the common law, or by the fundamental principle of every free government, except by *this clause*; and that to leave it out was to leave the government without a power of suspending the privilege of Habeas Corpus in rebellion or invasion, whatever the public safety might require. The existence of any exception was therefore the point in question, principally; the body on which the power of the exception was placed, secondarily or subordinately.

I had thought, indeed, that by the principles of the English Constitution, properly speaking, Parliament had no such legislative power as to imprison a man and hold him imprisoned without trial; and that this was authorized by Parliament, by an imperial power for the public safety, in times of public danger and necessity, as it alters, when it becomes necessary, the succession to the crown, or makes an acknowledged change of the Constitution; and that it secured the parties to the unconstitutional wrong of arresting and detaining suspected persons without trial, by bills or acts of indemnity. In those acts, called suspensions of the Habeas Corpus Act, there is no word of reference I believe to that Act, nor do Parliament treat the Imprisonment Acts as a justification by the Constitution and law of England of what is done under them. They authorize the wrong, and discharge the right of complaint absolutely. Such, at least, was my impression. Congress, I suppose, has no such powers by the eighth section of the first article, nor any powers of the kind, unless they are given by the Habeas Corpus clause in the ninth section. How far these powers extend I pretend not to say. Unless the clause in the Constitution is both a power and an *indemnity* to those who exercise it, our condition is remarkable. I will not, however, weary you at present with any more on this point. . . .

You may think it strange that at my age, I, who have never been a politician, should have concerned myself with such a question; but neither the public nor our friends will permit us to take off our

harness merely to please ourselves. Had not the tract appeared to quiet at a critical moment the minds of a good many patriotic men, and brought me a great many letters from professional men and others approving of it, including one judge and one eminent chief justice, before whom the question cannot come judicially, I should have thought that my friends had been too importunate and myself too acquiescing. The chief justice wrote to me that the tract had changed his opinion, as he formed it after the opinion of the Attorney-General had been presented to Congress. But all this is very little to the purpose.

Our awful civil war goes on, and our most prodigal sacrifices of life and treasure. Some among us say that the crisis is approaching. I have no opinion about *this*. The crisis of such a disease, however it be passed, is not the cure, not the assurance of it. The disease may leave a poison behind it, and kill in another form by decay after the fever has passed away. God only knows what is to be the end of it; and to His own providence old age at least is wise in submitting, as I do, with prayers for His protection and mercy.

We feel, I think, more kindly towards England since the settlement of the Trent affair; and perhaps Mr. Seward—I ought to say the President, for he is not thought to be a cipher in such matters—did well in not announcing too promptly his purpose or inclination to the people. He gains daily upon all of us, in the great attributes of integrity, a love of justice, clear good sense, untiring industry, and patriotism. He also is thought to know the people, which is a great matter, as he came in without the reputation of being able to lead them by command.

I ought to have said that I have not heard of his making any proclamation on the subject of the Habeas Corpus, nor do I know how his warrant or warrants may describe his purpose, nor even whether his action is civil or military. It has probably been both ways. Congress is now quiescent, perhaps acquiescent. How it may be a few weeks hence I cannot say. There are said to be two parties in that body, one of which is thought to be disposed to bring on emancipation forcibly. What its strength is, is unknown to me, and,

I learn, not generally known. The President it is said is not so disposed. . . .

P. S.—I will place in a postscript my serious doubt whether, if the President has not the power to suspend the privilege of the writ, it will ever be suspended in this nation. To deny his power is, I more than doubt, to extinguish the power practically. That question, when brought before Congress, is brought directly before the universal people.

*(To Dr. Lieber.)*

PHILADA., 20 March, 1862.

. . . Burnside's affair seems to have been really great, not more in the achievement than in the heroic struggle and fight. I believe that before this time the miserable taunts of the chivalry against Northern and Western courage must have come back to them, and brought a ghastly sinking of spirit. I was glad to see those Massachusetts men flashing their bayonets in the faces of the enemy until they retired, which they certainly did not "eyes front" to the bayonets.

There has been quite a galaxy of pamphlets against me from, I understand, a part of the bar. I have no knowledge of the parties except in one or two instances. They are said to be of secession dispositions, and of that portion of the Democratic party which voted for Breckenridge; and as far as I know them, it is true from internal evidence. I have read nearly all, I suppose, to find if there was any political or constitutional law in them, but I find only this: (1) That the clause gives no power, but is a mere restriction, and that but for the clause, Congress would have unlimited power to suspend the writ at any time. (2) That in the State conventions delegates said the power was in Congress, the point not being whether President or Congress, but whether the United States ought to have the power, or only the States. (3) That the bills of rights of the States say no law shall be suspended except by legislative authority. The first is flagrantly wrong, and makes Congress constitutionally able, under the power to organize the inferior courts, to disorganize them. The

second is setting up impressions formed on one point to decide the construction on another when it is mere talk either way. The third is founded upon the new principle that the Constitution is not as strong as the Legislature.

I shall be glad to hear of any others, and will in due time notice them. I rather infer that the number of pamphleteers is the result of a combination to work the question up for party use. I shall not notice them, but their points, if I find any.

As foreshadowed in the preceding letters, Mr. Binney published in April a second pamphlet on the suspension, analyzing and answering the objections which had been made to his views. The most forcible objection was that of Judge Nicholas, of Louisville, and some others, that the Habeas Corpus clause did not give the power of suspension to any one, but merely limited the power granted to Congress by other provisions of the Constitution. Unfortunately for Judge Nicholas, however, he had no very exact idea of the Congressional power, which he thought included that of suspension, and he vaguely pointed to a power "to regulate the courts." As Mr. Binney pointed out, the Constitution gave no such power, but merely a power "to constitute tribunals inferior to the Supreme Court," a very different matter, which could not possibly include the suspension of the privilege of Habeas Corpus.

In his younger days, when the country near Philadelphia was better stocked with game birds than now, Mr. Binney had been quite fond of shooting, and it was probably some memory of pleasant tramps with dog and gun that suggested the words with which he closed his demolition of Judge Nicholas's objection.

It profits not, therefore, the covey of reviewers from the Philadelphia bar, which has been flushed and put upon the wing, by the

Tract on the Privilege of the Writ of Habeas Corpus, to look about for some other branch of Congressional power to alight upon, with more security than the Louisville reviewer. There is no choice left. All the branches are cut away by that mandate of the Constitution which ordains the constitution of tribunals to administer the judicial power. The question of the writ of Habeas Corpus is a question of judicial power. No power of Congress can mutilate that department.

(*To Dr. Lieber.*)

PHILADA., 17 May, 1862.

What is the use of logic? Would you believe that for all my pains I get an answer from Judge Nicholas, which amounts to this and no more: If Congress, without the Habeas Corpus clause, had taken away or not given the Habeas Corpus, how could the judiciary have helped it? God save the poor man who wastes lamp-oil upon such heads! He does not perceive that this reduces it to a question of force. I might ask him, If the President will imprison without law, how is Congress to help it?

I think it material to remark that if any one infers from my pamphlets that I think Congress cannot indemnify the parties to the wrong, he goes in advance of me. Without the Habeas Corpus suspension power, they certainly cannot do it. That I have denied. The power to indemnify may belong to the dictatorial or imperial power of England; though in its indefinite extent it is an exorbitant wrong. But without the Habeas Corpus clause it would not belong to the Federal government at all. With that clause, however, if Congress has the power of suspension, and not the President, why does not the *ratihabitio* cover the whole wrong, for the President's protection? It strikes me that this matter ought not to be neglected by the President's friends in the two houses, while they are the majority. Party is infinitely rash and bitter at times, and our parties are like the tides in the Euripus, which ebb and flow seven times a day. No one can explain the present phenomena of party in the houses; at least I cannot, and will not drown myself in the strait, as they say Aristotle did, because he could not explain the tides in it. In general the thing

is not worth hanging for; but I should be sorry to see the President come to grief between a bitter judiciary and a bitter jury. I believe him an honest man, and wish him well.

Is your son Hamilton nearly well, and Norman, where is he? Mustn't we have a great fight near Richmond? It is said General Scott thinks it will be done without.

P. S.—Unless we fight and whip in both places, Corinth and Richmond, England and France will come in, I fear, with their moral intervention. So I guess; I will not condescend to fear it.

As a practical matter Mr. Binney thought it very desirable that his view should prevail as to the President having, under the Constitution, the power to suspend the privilege of Habeas Corpus, because it seemed very unlikely that Congress would develop enough resolution to risk unpopularity by authorizing, even in times of rebellion, the suspension of one of the safeguards of civil liberty. He feared that unless the President could suspend, the privilege of the writ could not practically be suspended under any circumstances whatever. After the war had been going on for two years, however, and the election of 1862 had shown, on the whole, an endorsement of the administration, the Act of March 3, 1863,<sup>5</sup> was passed, authorizing the President, as long as the rebellion lasted, to suspend the privilege of the writ in any instance where in his judgment public safety required it. The same act required that the names of all persons so held should be certified to the United States Court of the District, and that unless the prisoner were indicted by the next grand jury he should be discharged. This regulation of the President's exercise of the power of suspension was probably reasonable in itself, but the passage of the act did not affect

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<sup>5</sup> 12 Stats., 755.

Mr. Binney's conviction as to the constitutional question, and two years later he took the matter up again. In this connection it should be noted that he strongly disapproved of so much of the President's proclamation of September 24, 1862, as extended martial law and suspension of the Habeas Corpus to military arrests for discouraging enlistments, or for other disloyal, but not legally treasonable, acts. This proclamation went far beyond anything that Mr. Binney's pamphlets had justified, but he refrained from any public expression of his views, as he thought it the duty of loyal citizens not to hamper the administration by protests, although it might make mistakes or even exceed its legal power.

(*To J. C. Hamilton, Esq.*)

PHILADA., 4 Aug., 1862.

. . . You ask me if it is not a crisis. Perhaps it is; but I think we shall go through it, if the government will be firm in its demand, without fearing or addressing the political disaffection which is trying to disturb the country, as if the question were a mere question of party. This spirit must be put down, and it can only be put down by not truckling to it, but by denouncing and counteracting it with decision. To suffer men in our States having loyal governors, and they, with the Federal government, holding in their hands all the military force and all the law, to deter or dissuade men from enlistment, on any pretence or ground whatever, would be criminal weakness. The offence is treasonable. If it is regarded as within the liberty of public or social opinion, and therefore to be tolerated if expressed indirectly in the form of argument, the mistake will be fatal. The call for volunteers the second time has not met my approbation, nor the effort to draw the bounty from subscriptions. The excuse made for Governor Curtin, that there would be a factious opposition to bounties on the eve of the next election, does not meet the case. There should in my mind have been an immediate resort to the draft, and a great effort to sustain it by public meetings, with

subscriptions to aid the supply of substitutes for such as would have been unable to find them with their own funds, and yet were so essential to family dependents as to make their departure on service ruinous. This would have been my plan,—law for the enrolment and draft, subscriptions for relief from severe exceptional pressure by the lot. We must come to this, as the enemy use it with the utmost rigour, and if the attempt should be made to break down the law, ordinary firmness and the law will break down those who make the attempt.

We want the government at Washington to let the people know and feel that neither the defence against the rebels nor the mode of making it as the law authorizes it to be made shall be made the subject of action by traitorous citizens, as if it were peace and not war that was the issue. I am not going myself to become an abolitionist, which I never have been; but if within the Act of Congress the government shall use slaves for military labour, and freedom is the result, I shall not complain of it. The negroes are a part of the force of our enemy. I would dare, as freely as the Act of Congress permits, to use that force against the enemy, and so I suppose General Halleck means to do. We shall be whipped as sure as fate, if we fight with one of our hands tied behind our backs and the other one with a buff or boxer's glove on, while the enemy uses both hands and feet of all colours, and our fellow-citizens at our homesides are permitted to discourage our people from doing what the law requires. Let us not only be men ourselves, but require our neighbours to hold their traitorous lips in silence; and if when drafted they refuse or desert, to treat them with the length of the law, and the strength of the military arm to enforce it. This I hope will overrule the crisis; and though I have not the least authority to say anything on this head, I believe the people will support the government against any party.

Dr. Lieber had two sons in the Northern army, one of whom had already lost an arm in battle, but his oldest son had remained in the South when the family removed to New York some years before the war, and had ultimately espoused



the Southern cause. At one time Dr. Lieber had heard that he was wounded, possibly a prisoner, and Mr. Binney had an inquiry made among the prisoners in Philadelphia. Finally it was known that the young man had fallen, and to this the next letter relates.

*(To Dr. Lieber.)*

PHILADA., 5 Aug., 1862.

You and your wife have my perfect sympathy in the suffering that has come to you from the event in Richmond. I feared it was foreshadowed by the considerable interval that had elapsed since your preceding letter.

I do not mean to examine or to question the special ground of regret which you intimate, in the occurrence of such a loss while in the Confederate service; but there are considerations which must not be overlooked while we are regarding it in the personal or family relation. His connection with that service may have been involuntary in the personal, and even in the moral sense. He may have acted under a generous impulse of gratitude for public benefits conferred. He may have sincerely entertained the belief, which so many in the same quarter have publicly declared, that the object of the North was to place the slaves above their masters, and to tear up the social conditions of the South by the roots. With such a conviction, who would have thrown at him at all, let alone the first stone? In such a broad and deep division of the nation as this is, with ten thousand times ten thousand voices at the South uttering the same conviction, many of them no doubt falsely and hypocritically, but many of them in a good heart, it is impossible to adjudge the personal condition of a man by his outward public acts. They may have been a demonstration of the highest personal virtue, such as all men should love, and not that dark offence which, in the general public relation, the law denominates it. Derwentwater, in the '15, almost makes one in love with treason. The truth is, that treason or rebellion, though the highest offence in the law, and sometimes in the personal relation the

basest, has no necessary baseness personally. The provision of the common law which attaints the blood, and despoils the traitor's children of their bread, does it upon the principle that the love of wife and children may deter him from the treason. The penalty is addressed to the noble affections, which the law supposes will be in conflict with the temptation. The legal and political judgment alone is applied to the offence; and the personal wrong can be pronounced only by the moral judgment, which can hardly ever pronounce it with safety, except in an abstract way, and which no father and mother should distress themselves by applying, or by supposing that any man of right mind will think of applying to an otherwise worthy man. He has died in what he believed was the performance of his duty. Our Saviour went further than all this, not to exculpate wrong, but to discountenance personal judgment even in a flagrant case.

I have been much struck by the pointed and decisive answer the North is now giving to the pretence of the ambitious bad men of the South, who have poisoned their country with the belief that the North meant to uproot the institution of slavery, and therefore that it was impossible to avoid making war against us. The absence of any such Northern feeling generally, or even to a dangerous extent, is now the cause of our most dangerous and weakening divisions. Even in the midst of a war which is entirely defensive, and in the presence of imminent danger, it is the great impediment to the use of even military power to weaken the South by interfering in any way with their slaves.

God knows I disapprove of the institution of slavery every way, —for its effect upon the slaves, still more for its effect upon the masters, most of all for its incompatibility, growing and incurable incompatibility, with such a government, black slavery pre-eminently. Happy Czar! It would be a heavenly boon for us to exchange black for white, two for one, or one for two, just as he pleased.

I do not wish to be quoted to the President, or any of the Departments, or to anybody; but while I am not and never have been an abolitionist, in the imputed sense, I have no idea of protecting the slaves of the South in such a war, or of letting them interfere with the full use of our military means, with them or against them, to

subdue the enemy. Unless this result is reached and the slaves are made to be *adstricti* to their own States, I do not see how we are to live hereafter, either united or divided.

(*To J. C. Hamilton, Esq.*)

PHILADA., 8 Oct., 1862.

Your kind solicitude for some of my descendants, who are and have been a small part of this war, is very interesting to me. It is not wise, however, to cultivate in such times as these that tenderness of heart which feeds the interest for those who are in daily peril. We must trust them to the Higher Power, whether we will or no. We can do nothing for them ourselves, unless it be to pray for them; and after that, the best course for ourselves is to take a step of a century or more in advance of the day, and look back upon our children and ourselves in the *post futurum* light. It will be better for them and for us that they fell in defence of their country, their country being so indisputably right, than to have lived to old age in what is called ease and comfort, and then to have gone into an oblivious grave, with the burden of ten thousand forgotten duties, which ease and comfort pass over unregarded. Everybody, perhaps, will say this for another, though so few say it for themselves; but depend upon its truth, for it is the word of God, which both the Bible and all profane history teach. *Sursum corda*, therefore. I will not grieve over any one of my line who suffers or falls in performance of his duty. My regret is that there is not some way in which I can give anything more than the dead weight of old age to the cause, which, however, and upon what plans soever it may be conducted, is the noblest that can engage the heart of man. I have to use this language, for the plans which have been adopted in the application in our immense force and resources I have sometimes disapproved when I thought I understood them, and much more frequently I have not understood them when our rulers have explained them. I go for the support of the government, as *per se* my duty, until mere obstruction shall be obviously better than what government is proposing to do; and that condition is not likely to occur. I say this in special reference to the President's

Emancipation Proclamation, which is now the uppermost thing in the country. I do not understand the law of it. And do not believe that there is any law for it, unless it be the law of force in war; and if it relies on that (which the Proclamation does not say, as I read it) it would, I think, have been much less disturbing to the country, and even more effectual, to have said it by way of conclusion than of premises. I shall be most agreeably disappointed if it does not in Pennsylvania bring up the Democrats into the position of a majority; and how much that may prejudice us no one can say. Nevertheless, I utter no word against the Proclamation, unless it is against it to say, as I do to some of my friends, that I regard it as an accommodation bill, which will pass only among friends, and may be withdrawn at maturity if funds are not provided. I still think the President is sincere and honest; but does the confidence of even his friends increase in his general competency? O for that woman of Endor, to call up some, or at least *one*, of the dead! And yet, better is it not to hear Samuel again, than to hear what Samuel said. . . .

*(To Sir J. T. Coleridge.)*

PHILADELPHIA, 11 Nov., 1862.

It is very kind in you, my dear sir, to give me another of your excellent and comforting letters, when I have not as yet acknowledged a previous one of the 13th August. It is no doubt because you keep no account of kindness to your friends, and especially to one who, from the condition of his country at this time, and for two years past, may be called a sufferer. I so understand it, and appreciate it, and am very grateful for it. . . .

You say truly, my dear sir, that I feel the condition of things here the more for having so long witnessed, on the same spot, a state of general quiet and prosperity; and the change affects me with the more poignancy, because I have to give up my oldest grandson, and others of my family, to service in a most sanguinary and desolating war. I should, indeed, be entirely without consolation if I did not habitually look up to the great Being who has been so merciful to me all my life, and who I believe will overrule all the actions of men to

the final triumph of virtue, and did not at the same time believe in my conscience, that this defensive war on the part of the North and West is perfectly just, was entirely inevitable, and cannot be terminated without submission by the South, or ruin to the country of which I am a citizen. It is this belief that sustains me, and sustains thousands of reflecting and good men by the side of me, all, nevertheless, feeling the same anguish, that so many in Europe say they feel, at this terrible war.

I know what they say in England and elsewhere, that the South cannot be made to submit, and therefore that we ought to make peace, that is, to agree to their secession and separation as they require, and to cease the shedding of blood. But I do not hold to this opinion that the South cannot be made to submit. It is far from being certain, or, I think, probable. But I hold with entire conviction to another opinion, that unless the South is made to submit, and whether the separation be voluntary or otherwise on our part, we are an undone nation, and shall have at our side a power that will rule us in peace or in war, to the ends of negro slavery; and I call this being undone. I think you would all agree to it in Europe if you would forget the advantages of commercial intercourse with the South, and knew both that part of the country and the whole of it as well as we do. I do not mean to say that we shall certainly compel the South to submit. Their strength or passions may prevent it, or we may become divided in the North and West, as there is some ground to fear. I cannot answer for what the Democracy may do. *They* have brought in Texas; they made the war against Mexico to acquire slave territory; they united with the South, and would unite again if they could, under that false name, to get place and power at home in exchange for slave rule over the whole. I cannot answer for this, but I regard this as ruin for my posterity and nation, and therefore I make the choice of conscientiously contending, in this defensive war, against the slave power. My conscience, my dear sir, shall not undo me, although I may be undone by the South, in connection with my own blinded or corrupt fellow-citizens.

But I am ashamed to have said so much to you, my dear sir,

and so much especially without giving my reasons. But this cannot be done in a letter.

I don't mind what Mr. Gladstone said. Great parliamentary as he is, he has got to like the fanning of the *aura popularis* upon his brow. I don't mind what politicians say anywhere. It is a calculating and rather venal body. I do from my heart admire and respect a great body of good men in England, who, I am sorry to say, appear to feel a sympathy with the South in this contest; and this grieves me deeply. I cannot understand it, nor am I able to distinguish it from a sympathy with the slave-trade. It is the slave-trade in the very worst form, and it is the predominancy of slave masters over freemen and freedom that are now in question, and have made this war. And they will continue it and renew it until they overcome all freedom in their neighbourhood or are overcome by it. Therefore I submit, and cheerfully, to whatever sacrifices this great defence of our freedom and virtue may call me to.

I wish I had some news to tell you. I hardly open a newspaper, but they have everything, and more. General McClellan's recent removal from command of the Army of the Potomac makes much remark and some discontent. In nine days it may be less exciting. He is an accomplished officer, and has been successful in training the army, not enterprising in fighting it. There has been a party against him for long. Finally he has been *relieved*, as it is called. But his army is really at this time in the face of the rebel army, and this adds to the dissatisfaction from his removal. We require all our fortitude and all our energy and all our devotion. I do not, to answer one of your remarks, see at present much change in our people. Overweening enough, and vainglorious are some of us. We have no reason to believe, if this war is a dispensation for the punishment or cure of sin, that we have not many of our own to answer for.

I beg my regards to your son. I have read his speech at Exeter, —a very pleasing photograph of him certainly. We do not, I think, mean the same thing at all, by *democracy*. So far from it, that I wish him success in his canvass, tho' since I have known Democracy in Pennsylvania I certainly have never wished political success to any member of it.

(*To Dr. Lieber.*)

PHILADA., 4 Dec., 1862.

I have received Mr. Livermore's Memoir,<sup>6</sup> and have read it with great pleasure. No person of my age required a document of this nature to assure him that the positions of Jefferson Davis in his first message, in regard to the change of opinion on the question of slavery at the North, and as to the sale of their slaves to the South, were false and covinous, as the old law-books say. I have travelled alongside of the muse of this history for more than sixty years, and all is written in my memory as Mr. Livermore records. He says little of Pennsylvania; but the Abolition Act of 1780 of that State prohibits expressly and punishes that thing which Davis charges upon them as the venality of their conversion from the love of slavery to the abolition of it. Nothing was ever more false than Davis's crimination of the North in this respect. I speak, of course, of the ruling and predominant sentiment of what are now called the free States. . . .

I should like to know what you think of the President's message. It is, I think, like his other messages, honest, sincere, and frank; and some of its *short* logic is good enough, but he does not excel, I think, in *long* logic, and I remain quite at a loss to reconcile his proclamation with his *projet* of emancipation, except by supposing that the emancipation shall apply only to those slave States which shall be represented in Congress on the 1st Jany., and to whom the proclamation seems to promise that they shall keep their slaves in slavery as they now are! I shall be glad, however, if he gets through the matter in any way, zigzag or otherwise. There is, I fear, no straight line of passage through it but force, if this people would consent to it.

What I fear, and deeply, is that Democracy and Constitutional-Unionism will patch up a *status ante bellum* that will skim over the ulcer, to break out at a future day, and to leave all the lost arms and

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<sup>6</sup> On the Opinions of the Founders of the Republic upon negroes as slaves, as citizens, and as soldiers, a paper read before the Massachusetts Historical Society.

legs and lives of the war without recompense, and almost without a grateful remembrance by the country. If party shall bring this about, it never did a more accursed thing. I had rather fight my remaining ways, and give my skin for a drum-head to keep up the fight afterwards, than agree to such a base and ignominious conclusion as this. And yet, is it not in preparation?

If this Mexican war by Napoleon, in connection with his plan of mediation,—which two, it strikes me, are one,—shall unsettle that cordial *entente* of France and England, as perhaps there are some prospects, the scene may change in the course of the winter. At present the clouds are heavy, and my poor eyes almost give up the effort to see through them.

Halleck's report is a very interesting one; it seems to foreshadow two charges against Mc[Clellan],—that he was determined to throw his failure at Richmond upon the administration, and to disappoint them of victory afterwards by delay, delay at the beginning and delay at the end. His neglecting altogether to inform his general-in-chief of what he was about, or not about, at Sharpsburg was next of kin to mutiny.

(*To the same.*)

PHILADA., 17 Jan., 1863.

I hope, and I think, that the invention of certain Democrats, to exclude New England from a new Union, is a very weak one. The project I suppose to have been suggested by some men who belonged to the Breckenridge wing, and who are longing to get back to that condition in which the South took the ambitious lead under false colours, and left to the North the base spoils of office, where subordinate offices most abounded. But I do not believe that the mass of even the Democrats by name can be seduced in this way, and I am sure that the body and heart of the country are not to be seduced to Southern re-alliance in politics. The basis of such re-alliance must be slavery and connivance with slavery; and that I hold to be impossible to North and West.

For many years I have given up a former opinion, that the



New England men were bigotedly devoted to a tariff. I gave it up after full conversation with men of the best intelligence and most extended personal concern in manufactures, from whom I learned that as a body the cotton manufacturers were indifferent to it, some of them, my own friends, averse to it, or, rather, jealous of it. They feel themselves to be quite independent of it, self-reliant in both capital and skill. The passion for tariff is a Middle State rather than an Eastern devotion. It is the iron manufacture that is the seat or centre of the excitement in favour of tariff prohibitions or duties. The proprietors of this really precarious interest are those who stimulate the mass and bring all the troops they can muster,—New England men for their cotton and machine factories, the Western and Middle men for their wool, and everybody for his own special concern, to unite whenever there is to be a fight. Yet with all their show they are indebted, for any success they obtain, to accident, and not to their own strength. The New England people know this as well as any people; and they are a people who never give their hearts to anything they cannot perdurably make their own. Pennsylvania is more likely to run crazy after iron than New England to run after anything that cannot with great certainty be had for the running. And yet poor Pennsylvania, great as she is in population and wealth, can she ever be anything but a make-weight? . . .

Perhaps I don't exactly agree with you in supposing that a pamphlet setting forth New England's excellencies is very necessary, or very expedient at the present moment. Not very expedient, because the jealousy of her and the purpose against her are not sufficiently declared; and it is not discreet to proclaim your defences while your enemy holds back the nature and object of his attack or accusation. It is not necessary, perhaps, at any time. St. Paul tells the Corinthians, "Ye are our epistle written in our heart, known and read of all men." The New England men are their own pamphlet, read everywhere in the land, in their everywhere present characteristics. Nothing can be said of them, good or bad, that is not universally known. They are everywhere, and have a hand in everything, and are the best hand in good things, and perhaps the best in some that are very bad,—best

in a bad way,—slave overseers, for instance; but the best universally for practical administration to make the most of small things and to secure what is their own, though not the best to devise at first the greatest things. If New England shall not form a part of any nation that may exist on this continent, it will be because she does not want to, because she does not think it worth while, because she believes it won't pay. To exclude her against her will would be as impossible as to dam in the Amazon or Mississippi. I wish I were as sure that my own State will be in the place she wants to be as that all the States of New England will be.

I will, however, give my voice for *your* writing the pamphlet, and I promise myself beforehand more pleasure from reading it than if it should come from any other pen. It would be more generally read, moreover, and be more generally assented to, than from any other quarter. I hope at the same time, if you do write it, you will not say, for you cannot think, that this opposition to the Southern defiance of all compromises, and Southern idolatry of State rights to annihilate the Union and to absorb the national authority, originated in New England or in either of its States. The crystallization may have first begun there, and perhaps in Massachusetts, because an old collision between that State and South Carolina made the Bay State less able to hold in solution the new matter which Southern imperiousness had generated. The first deposit may have been there. But my clear impression is that the whole North, Middle and Western, were supersaturated before there was a deposit anywhere, and the supersaturation was in that part of the people that was freest from party leading, and freest from ignoble accommodation to false, unconstitutional, and immoral pretensions.

I verily believe—I beg you, if you care to remember what I say, that you will remember my faith in this matter—that the real cause of this rebellion, the spring of it to the South, the spring of resistance to it at the North and West and everywhere, was in the Dred Scott decision; that the author, *fons et principium*, of the outbreak is Roger B. Taney, neither more nor less. It was he who first helped the South to the appearance and similitude of legal authority,

in asserting that right to carry their slaves into every territory, whatever the majority of all the nation, or its executive and judicial departments, might say; and it was he who first told all the rest of the States that common sense and long-sanctioned interpretation of plain language were as nothing against the interests of slavery. The whole mass of the thinking people of the nation started at that ominous sound, New England not more than all other freemen who were in their senses. And from this has sprung all the rest,—we of the North and West to follow out in opposition every act from the South that proclaimed a determination to have a Constitution such as the Dred Scott decision had attempted to make our own. The Confederate Constitution is, in fact, only the Federal Constitution with the Dred Scott decision added to it by new specific clauses.

Are we to shrink, or to fold ourselves in despondency, in a contest so beginning, because we do not succeed at once? Heaven forbid! This success at once, the weak hope or wish of our people, perhaps of all people who have their say to such an extent, is our great danger. We have suffered immensely by it, and may—I must admit the possibility—we *may* fail by it, but let us see what will be the fate of an administration which proposes peace on the basis of the Dred Scott decision. I do not believe that such a peace would even skin over the last wounds of the war before it was broken.

Did you see what a member of the House from the West said on the subject of the war? It was said with the air of great decision. “If you can secure Kentucky and Tennessee in this war, you will conquer. If you cannot, separation is inevitable.”

But what a strolling actor I am, in rambling all these incoherences in return for your sensible, though desponding, letter!

## XIV

THE CIVIL WAR PERIOD (CONTINUED)—THIRD HABEAS  
CORPUS PAMPHLET

1863-1865

THE Union League of Philadelphia, which had been formed for the social intercourse of loyal men, and to exert a collective influence in support of the Union, had planned to emphasize its work by a grand banquet on the Fourth of July of this year. Almost at the last moment the project had to be abandoned, as the menacing advance of Lee's army summoned the members of the League to more serious tasks than feasting. A few days before this, however, on June 25, Mr. Binney, when writing to state that his age and failing strength compelled his declining the League's invitation, took occasion to express his cordial sympathy with its work. The League was at that time a thoroughly non-partisan body, where loyal Democrats and Republicans were equally at home, and this obliteration of party lines was to his mind the most healthy and hopeful feature in the League's constitution. Possibly he looked forward to a time when the League might be tempted to give up its non-partisan character, and thought it well to sound a note of warning, as well as of encouragement. At all events he made non-partisanship the central thought of his letter. Pointing out first that devotion to the Union and support of the government ordained by the Constitution

were the spirit of Washington's Farewell Address, he went on to say,—

If there be any practical distinction between the government and the administration, party has made it, and not Washington; and it is a distinction disloyal to the Union, the Constitution, and the government. It reduces loyalty to the degraded rank of personal favour to personal actors in the government, and to party satisfaction with party measures of government. The doctrines of Washington were not party doctrines. Washington belonged to no party, wrote for no party, and acted for no party. He feared the evils of party more than all other evils which could assail the Union. He has described, and almost denounced, the designs of a party disloyal to the Union, which he thought was in sight in his own day. This was the parent thought of his Farewell Address. He discommended parties altogether, and at all times, as intrinsically dangerous to the Union and to republican government.

Let us be thankful that God spared the eyes of this pure and incorruptible patriot from beholding, and perhaps his spirit from conceiving, the terrible depth to which this nation would fall when an immense and ruling mass of its people would regard party as a political virtue, and the passionate exaggerations of party as the only efficient instrument of government. He was especially blessed in escaping the sight of flagrant and wide-spreading rebellion, raised up by and through the spirit of party, to blast the best fruits of the great labour of his life, to destroy the Union, to falsify the Declaration of Independence, and to lay foundations in government which all our fathers abhorred. That sight has been reserved for us, perhaps for our unfilial disregard of his advice, which seems to have been an inspiration of Heaven.

The letter was published as one of the League's series of war pamphlets, but whether its sentiments would have been equally well received in more recent years is perhaps open to question.

(*To Dr. Lieber.*)

PHILADA., 7 July, 1863.

I wish that circumstances had permitted the Union League celebration on the 4th; but the moment that Lee's advance foreshewed his coming, everybody saw that we must think of something else. Every one saw that it was better to throw away the expense incurred than be chargeable with boasting and affectation abroad, and be said to check the outflow from other quarters. Your theme would have developed very attractively to hearers of all descriptions, for you have the art, with the heart.

The rout and retreat of Lee are certain, and we shall, I hope, hear more. But I do not expect all or half of what the press predicts. I hope it settles the question of Northern invasion. They have no such resources of men or supplies at the South as will enable them to come again so far from their base. We have a strong and fresh army from Pennsylvania, eighteen to twenty thousand, pressing on the rebel rear—I wish it may be the rebel rout. Our particulars of killed and wounded are now to come in, and will darkly overhang us for a long time. We do not yet hear of our grandson, and the non-intelligence is thought to be favourable. . . . How crushing is the weight of hours of suspended intelligence after a battle of two days! It seems to me that there has been no fighting more desperate and deadly than ours; and so I predicted it would be. . . .

My dear Lieber, I have had nothing to do, in all the agitation of the past fortnight, but to hold on. That is the best thing that any man can do in such a hurricane, even if he has nothing better to hold by than himself. I made a few simple arrangements, very quietly, to place my wife in safety with her friends on a day's notice, and I had nothing further to do but watch and pray, which had no tendency to disturb me in the use of my faculties for anything that turned up. I felt deeply for many, and had many to think for, and to assist in doing or preparing for themselves what I had done for my wife, but since this there has been no agitation, nor any wasting of our strength by anxiety, or by much inquiry to learn whether we need be anxious. I am gratified by your solicitude for me and mine. I should count upon it in all similar conditions.

(*To the same.*)

PHILADA., 11 July, 1863.

It is true, I believe, that my last letter was mailed before the news from Vicksburg was received; but if the hurrah, and the bell of the St  te House, and the insurrection of flags had proclaimed it before, I should hardly have stated more than the fact. I never crow. I never did crow. I *can't* crow, not even inwardly. I look upon it as a defect. I am sorry for it, but I can't help it. I sometimes am near to it, I suppose, when I have hit upon what I think is a logical demonstration, and the next thing I expect that my wings will collapse, and my tail drop, upon finding that it is no demonstration at all. So with Vicksburg; so with Gettysburg; so with any burg; something yet remains, and will remain, to keep me from crowing; and when all the cocks in creation shall have cracked their throats, mine will be as good, and as good for nothing, as it was before. If you will only tell me how this nation, government, people, will come to settle down in anything that will have a fair chance of lasting respectably for fifty years, then, if there is any crow in me, you shall have the whole of it, with a will. But there is so much misery in every victory that we have had, and that we can have, in this civil war,—the incarnation of evil spirits,—that while I say to my Union friends, “Go on, spare not; when one falls let two take his place; there can be no good end to it but victory or death,” yet I regard all this as mere conformity to duty, being utterly unable to see that even complete victory will bring us anything that will be worth having. If I had not a firm trust in God, I know not what I should be or do.

We hear nothing of my oldest grandson, who is aide to Neale of the Sixth Corps, but hearing nothing is good negative evidence of his safety. My second grandson is with his battery at Carlisle. My third left with his regiment (Second Union League) last night at twelve. And to all this I don't say nay, but cheer them on, and tell them, as I really feel, that to them these days of duty, however sharp, and howsoever ending, if they be ended in that service, will be worth a thousand days of ease and pleasure at home.

Meade has been doing admirably. I have known him long,

though slightly, as old seniors know young juniors. He has always had a pure character, and has been in the Engineer Corps since he left West Point. I knew his father well, and his mother well, and his grandfather, an Irish merchant in this city from before the Revolution. Mother and father were natives of Philadelphia, both of them of high spirit: the father a gentleman, the mother a lady and very beautiful. General Meade married the oldest daughter of John Sergeant. I was at the wedding, and handed Mrs. Meade, certainly even then the most beautiful person in the wedding-party, to the supper-table. All this makes the general come near to me, though I have for twenty years seen and heard little of him. From hearing so little, I did not expect all that he has performed; but I hear that all the commanders of corps but one (which, I don't know) preferred him to Hooker. I wish him unbounded success. . . .

Do you hear from your sons? Let me know.

*(To Sir J. T. Coleridge.)*

PHILADELPHIA, 10 Nov., 1863.

I find by a memorandum on your last letter of 23 Oct., 1862, that the date of my last was the 11th November. Of course I am just in time to make a continued claim to the kindness which your letters have always manifested, and which the lapse of another day might have barred. My title was at all times so imperfect that nothing but actual enjoyment gave me anything to stand upon; and I am very desirous of not risking that by omitting to interpose a claim.

But I have very little to say further. . . . You know what I thought as to the prime necessity that was upon us, to resist the South by arms to the end. I thought there was nothing else left to us, in point of honour, or in point of national existence. I think so still. This nation, as it has been made, and as it exists geographically, and in the relation of its great divisions, does not admit of division in any way to quiet this contest. There are large portions of the slaveholding South that are of this opinion. We must perish, that is to say, break into several insignificant, discontented, and angry parts, or we must come together again as one nation, even if it be only to



divide in a better way. A division between free States and slave States can only be the root of renewed war after an insincere peace, or rather a war-preparing truce. I hold to this opinion after as great an effort as any man could make to form a right opinion. And it is some confirmation of it, that up to this day no man, North or South, has, in point of fact, suggested any adjustment that had the semblance of real peace, or probable durability. This is no doubt the sharpest feature in the case. It is easy to suggest palliatives of our coexistence if we come together again; but no one has hitherto been able to shew how either section can live in sincere peace upon the only division the South has ever claimed or suggested.

I have no doubt that we cannot go on with this war on its present scale forever. But the wisest statesmen do not insist upon looking so far ahead. England could not have gone on forever against Napoleon or the policy of Napoleon. But she did not come to the day when either expense or suffering deterred her from continuing her resistance while that man and his policy opposed her. Neither, do I think, can we refrain from continuing, indefinitely, our opposition to the only policy the South has ever proclaimed,—just as dangerous—indeed, this is an inadequate expression—as the policy and arms of Napoleon were to England.

There you see, my dear sir, that although I confess that I am full of regret, even to sorrow, for the state of things here, even weakened and enfeebled in health and spirits more than by the decay of years, at the frequent occurrence of battles and bloodshed and devastation, yet I regard the North, as it is called, as still contending for her honour, and peace, and life, and I sustain the *general action* of this government in opposition to the continuing defiance of the South.

Parties do not die, because the country might do better without them. The party opposing the government was at one time very menacing; and if it meant what it threatened, would have not only put us at the feet of the South in the great question of division, but would have carried over Pennsylvania and other States depending on free labour. That danger has disappeared for the moment, tho' it may come again. There is no avoiding the action of a party in time

of war, whether civil or foreign, because it has been formed with reference to peace and peace policies only. The union or association of men for any great purpose is too useful to its leaders to be dissolved under any circumstances, if they can help it. And it will be maintained, and is maintained even in this civil war, on the very border of treason, and sometimes crossing it. We cannot help this, but we may strive to disappoint the purpose.

I was much struck last evening, upon taking up Cicero's Letters in Melmoth's translation (excuse me), to find the same condition of things in the civil war of Rome. He tells Plancus, "Let me conjure you, therefore, to separate yourself from those associates with whom you have been hitherto united, not by choice, indeed, but by the general attraction of a prevailing party." There it is exactly,—union against the authority of government, "by the general attraction of a prevailing party." But the Democratic party has an immense fissure in it, and this is the present strength of the government. As it is a democratic party, I pray that the parts may never be reunited, but this prayer is without faith, and is therefore never mixed with those which I address to my Creator and Saviour. I have a horror of democracy as the radical principle of a government, as I dare say I may have said to you, for I have no concealments; while I am as firm a friend of free government as any man that lives. If this party shall regain its old force, as probably it will, the government, should it defeat this rebellion, will probably be the old thing,—not the best thing certainly, but infinitely better than anything we can have if the rebellion shall triumph. . . .

Old Lord Lyndhurst seems to have departed in the odour of some kind of sanctity. Age I suppose had embalmed him in some way, at least in the estimate of the leaders of some of your journals. When I was in England I did not often hear him spoken of with as much respect as his talents would have deserved had there not been some considerable drawback; but what it was I did not learn. He might have suffered in the opinion of Whigs, from his ardent and efficient course as a Tory; and if this was all, it was well forgotten when he manifested such unusual powers in his very old age for general politi-

cal instruction. I saw him in Boston in 1795, when he was travelling as a Fellow of Cambridge, I believe. It seems to me to have been but a year since.

Your health, my dear sir, I learned from the letter I referred to as being better, and that of Lady Coleridge also. I was much gratified by it. I shall always be happy to hear of the welfare of your family. My own is as it was a year ago, only a year older, that is to say, *minus* a year of life; in other respects unchanged, which cannot be said of the mass of my countrymen, nor of a great many in these times and parts.

(*To Dr. Lieber.*)

PHILADA., 1 Dec., 1863.

On this first of the month, at half-past five in the morning, under my bright kerosene lamp, I respond to all you say about the *Amicitia*, the rarest and best of the human ingredients of the *unitas fratum*. But there is too little of it, in the Ciceronian sense, to make it a matter of much delight or even of speculation with my countrymen. They are too universally a people of business; and business is the rotation of self upon its axis, rarely or never running truly in the wheels of other people. I rather think that I was formed for the right kind, and I had a long experience of it with my friend Chauncey. Some also I had with one other, and it was no fault of my wheels that it was not uninterrupted. It is a great blessing to the possessors, wherever it is of the right sort,—not for the strength it imparts to each, by no means, but for the peace it brings in a wider relation than a man has to himself. When I speak of strength, however, I mean strength in the world, strength to overcome opposers. The true moral strength to revolve regularly upon your own pivot of duty to all around you, *that* it does give and support to an immense degree, and it is this which makes the friendship of two or more virtuous men, the blessing of many, and the assurance of all.

I am glad we have been drawn nearer to each other in late years, and sorry that it did not begin when we first knew each other. I think we seem to agree in sentiments, preferences, aversions, sympa-

thies, of the intellectual and moral kind, better than most. But we neither of us know what might happen if we lived next door; and therefore I moderate all my regrets, which are many, at your living a hundred miles away, by this reflection. We are not likely to fall out in the post-chaise; and if our correspondence brings me any regret, it is the ungrateful one that I am too old to permit it to last long. May it last and bear good fruit while we live. . . .

*(To the same.)*

PHILADA., 23 Feb., 1864.

. . . I am quite glad that Mrs. K——'s good fortune has made her husband independent. My memory goes back to a time when, from her good father's position, it might have been looked for at an earlier day; but better late than never, and much better than early and not late. My retrospect of the duration of property endowments in this State, and I suppose most States are alike, has shaken me from any such anchorage. I pray for daily bread both for my children and myself, but I go no farther; and nobody who does knows what he is praying for. If Pilate had asked me what is truth, I could have answered in those words, that no man who prays for greater provision than daily bread knows what he is praying for. He who prays for that and nothing beyond, knows that he is praying for that, and also for the state of mind, which is the greatest part of it. Get that and keep that, and the fall of greenbacks will not make our skies fall, nor shall we catch larks, but much better birds.

*(To J. C. Hamilton, Esq.)*

PHILADA., 14 Mar., 1864.

Your interesting letter of the 11th has been walking about in my head day and night, until, coming from church yesterday afternoon, I was informed by a friend that France was coming with intervention, something more than recognition, and that we were to be put much more upon our pluck and resources than we had hoped. So, Russian *engouement*, Treasury and State intrigues, the Greek Church, and grapes in Moscow at fifteen cents a pound from the Caspian have

received a temporary sedative in my brain, and I must turn to ask you what you know about this, as you are the focus of all the escaping rays of information from the departments at Washington. If Chase, like Seward, cares nothing about true fame, but only wants to get on the top of the pillar, like Simeon Stylites, to be looked at with upturned eyes by the people, and to be fanned with the *aura popularis* from all quarters of the heavens, as Webster did, and Clay did, and all have done for fifty years past who think themselves topmost, why then, in my notion, this republican government is made only to fool and ruin clever men, without ever deriving any solid benefit from them. I really can find but one man in the history of our country who wished to make his fame out of what he had done for his country in the way of solidity and security. I, of course, don't mean Washington; for though his heart and soul were devoted to doing what he thought best for the time and at the time, yet he had passed the age of construction when he first came upon the great stage, and his mind, moreover, was not of a constructive and forecasting order. I refer to your father, who has, and will, I fear, continue to have and to hold the niche of a true state-builder, alone and unapproachable, and made an undying name by laying the broad and deep foundations of public security and solidity. He did not care to invent a tottling, crazy, pillar, nor was he for making a vacuum all round him, that the public current might draw towards him; but he meant to build a great solid temple, that would protect and cover and accommodate everybody, his ambition being to have his name inscribed on that, and in its great chambers, as his enduring reward. These aspirations for the President's office are to me a wonder and an astonishment, and I sometimes think that the most decisive argument against a republic is that it fools and dwarfs the best minds in the country, by directing their hearts towards the vain, ephemeral show of the first office in it, to be obtained by popular arts and intrigues; and the saving feature of a monarchy is its permanent, though personally insignificant, head, which compels men of great minds from thinking of the pinnacle, and drives them to work for their own fame in the elevation and consolidation of their country. . . .

In July Mr. Hamilton brought out his edition of "The Federalist," together with his father's earlier essays, known as "The Continentalist," and Mr. Binney published a brief but careful review of the book.

(*To J. C. Hamilton, Esq.*)

PHILADA., 4 Oct., 1864.

I thank you for your letter of the 3d, and most especially for your pamphlet.<sup>1</sup> In regard to one part of your letter, please omit printing or publishing anything in regard to my grandson. Neither he nor any of his family belongs to the vaunting, puffing, blatant self-praisers, with which our world is already wearied and sickened. I noticed his participation in the fight at Opequan, only as a sort of classical feat of the young soldier, to beget a declaration of sympathy for me, which is so pleasant to an old man.

As to the pamphlet, it is as full of sense and spirit as an egg is of meat. When I see the vicious doctrines of Jefferson reproduced as they are in State rights, and in all the spawn of rebellion, I feel that evil is not to die by the arms of man. I cry out, "*Sedet, et in æternum sedebit.*" But the destruction will come from an eternal vindicator, when it shall seem meet to him. In the mean time the duty of all men is to oppose it in every form, and never to cease opposing it whenever and wherever it shows its face. I need not say that I agree with all you say, doctrinally as to the Constitution, historically as to the opinions of Washington and Hamilton, and politically as it regards the Chicago convention and platform and the candidates under it. I only say, to include a conclusion, that I am not, and never can be under any definition that I can adopt, a democrat. That the people are the final cause and the Constitutional origin of all power among us is true. I acknowledge no other, for either a republic or a monarchy; and having reference to this only, the government of Napoleon III. is as democratic, and the empire as much a democracy,

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<sup>1</sup> "Coercion Completed, or Treason Triumphant," New York, 1864.

as our own. But the moral source of all power, which is also the source of the people, has respect to the ends and purposes of power, and for the highest of these ends and purposes, the sure establishment of freedom as well as its diffusion, the people as people are not the true source of it, but God above, and the moral qualities with which His grace imbues some and not all men. Virtue, reason, love for mankind, which come from the eternal source of all power, have better right to exercise it than man simply. They are to be regarded as the qualifying elements of man for the exercise of power over himself as well as over others; and therefore with me the mere *Demos* is as little of an idol as the sheep or the sheaf he feeds upon. His moral qualities are his true title; and therefore, while I admit him to be the final cause of political power with us, I do not admit him to be the efficient cause of power in government. Hence I require siftings, distinctions, and qualifications, in all preparations for the exercise of political power. I am a republican, not a square-toed, crop-haired sumptuarist (I coin the word), iron-hearted fellow, like Cato the Censor, nor even like Brutus, the much better and kindlier man, though he killed Cæsar, nor even like Cato of Utica, who was an aristocrat like Brutus, and withal an oligarch; but I would fain fill this definition generally, with the properties of a large heart, full of love for the whole public good, which is the good of every man, and so limiting the power of the people as to make it turn in some degree upon the evidences of their moral qualifications. I do not assert that this is very practicable, and I do admit that any rigour or excess in the application of it is very dangerous politically; but this is my ideal, and if ever I took a name, it should be that, and not the name of democrat. Our Constitution is not democratical, but the reverse; but whether it should be democratical or republican, I think, is left too much to the States, and so did your father. He saw, and I think I see, that there may be more republicanism in a monarchy than there is sometimes in a democracy, which may be only another name for demagogracy, the worst government and policy upon earth, growing by what it feeds on till it breaks down its support.

(*To Dr. Lieber.*)

PHILADA., 18 Nov., 1864.

For a few weeks I have not been quite as well as usual, the principal trouble being in the eyes; but the election has been euphrasy to them, and I hope soon to have a full use of them. What a glory it has been; and yet what an infinite disgrace, what an ablation of all honour, the loss of it would have been! I am almost unwilling to allow credit for the success, so shameful would have been the defeat. And yet it is a great honour to a people to be so extensively possessed of a virtuous sentiment, and to carry it so firmly and loftily in the midst of suffering and sacrifice. It has made me feel, more than I ever expected to do, that we are a nation, a country, and that, God helping us, we will remain so against the world, the flesh, and the devil. This, and none other, is, I think, the voice of the election, what it says, as it were, to Heaven, what it says to the people of Europe, and to all points of the compass. And well for us is it that the voice has said it, for what should we become otherwise? My apprehension has been that if we should fail on this trial, we should be worse off than any other people in the world in a like case of dissolution. We have so false a principle of combination in us, such a preference for private partnerships in government, such a repulsion from everybody out of our own plot or survey,—I say this of our opponents and not of ourselves,—that we should have torn each other to pieces in the convulsion—States and men pulling and haling every way—and our race would have been given over as incurably centrifugal and incapable of alligation. As I go out of the world, it will be a comfort to think that this is not now so likely to be our fate as I once thought. . . .

(*To the same.*)

PHILADA., 3 Jany., 1865.

. . . As to the universal suffrage of free blacks, my judgment is suspended. I have no repugnance to it. Fifty years ago, as a judge of election, I ruled that a free black native of Pennsylvania, who had paid his tax, was entitled to vote; and there was no dissent.



Our Democrats, to accommodate the South, changed our Constitution in 1838 (amended it, they said) by confining the elections to white freemen. But I have always questioned, and almost repudiated, the quietism of the Federal Constitution in turning over to the States the qualification for representatives in Congress. The United States should have prescribed it for themselves, as a definite qualification, of freehold, tax, etc. Representatives and direct taxes have no proper interrelation, nor ought they to have, to mere numbers. Numbers should signify more than heads of human beings. They ought to be numbers of political beings; for if they are not these, they might as well be oxen or asses as human beings. If they are able to elect and be elected as representatives in the State Legislature, that perhaps might suffice for Congress. But is it practicable? At present I doubt it; and at present, and until full opportunity for observation, say until 1900 A.D., I had rather confine the apportionment of Representatives to white free men, leaving the question of comprehending others to a future day, not too remote.

But it is only one of the thousand and one difficulties of the day. I don't believe that Wendell Phillips is sane; for no man can be sane who is for doing everything he approves at once and not by degrees. Almighty power and infinite wisdom do not work in this way. God made the world in six days and not in one; that is, He made it by degrees. What an absurdity is it to say, You must do it in the end, and therefore you may as well do it now! The best reason for not doing it now is that you do not know enough or that things are not at present fitted for it, as they may be in the end. At present, if the South gave the qualification of electors to the free blacks, the blacks would be too feeble to use it properly. They would be the tools of faction, and work mischief, and against our peace rather than for it.

You are right in saying that I do not care to read the journals, nor to write about them. Do you call this history as it passes? Then it is made of shockingly bad materials. Nine-tenths is a lie, which is within a tenth of what Sir Robert Walpole thought of all history, and I do not. I care less about history as it passes than I do after it is caught, and can be held in the hands, and turned on all sides. But

I like to chatter to you with the pen and to read what you write. Mrs. L. is right. Don't let this communion die, except a natural death, which can't be far off. I shall be eighty-five if I live seven hours, and whether I do or not, affectionately yours,

HOR: BINNEY.

(*To J. C. Hamilton, Esq.*)

PHILADA., Jan. 10, 1865.

I thank you for your excellent letter. I like all its suggestions. I am getting on well, as well as possible, with such weather, which makes me miss my indispensable oxygenation. We want a *man* in Congress. O for such a man as I wot of! But he is among the stars. God bless him and his memory forever. No occultation will ever hide him from those who have once seen him. Haven't I read the report on public credit? Don't I know it, revere it, and revere its author for his sublime political virtue?

I think they care little about it at Washington, the whole being absorbed in the work of loaning, which they believe they help by the worthlessness of the thing loaned. Perhaps they do; but the time will come when this must come down, and where will then be the credit to build up again? The worst thing I know against Mr. Chase is his consenting to that audacious special income duty upon the income of an expired year, which had already paid the income tax assessed or charged upon it while it was in hand; and if this special income duty applies to the interest on the public debt, as they say it does, then in my judgment it is a plain and gross breach of public faith. However, it is all to be disregarded under the new law of 1863. Certainly there can be no return of spirits to the earth they have left, or your father's would revisit and frighten them in the Capitol! . . .

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 11 March, 1865.

I had no right to the great pleasure I have received from your late letter of 23 Feb. from Torquay, when I was already your debtor for the preceding one of Nov. 19 from your own home. You are

quite right in one of your suggestions as to the reason of your not having heard from me, and as wrong as possible in regard to the other. A day or two after the receipt of that letter of 19 Nov. I took rather a long walk on a very cold day, the first of the very cold weather that was to follow, and in the afternoon found myself lamed by the effort. It proved to my family physician the next morning to be an inflammation of the lymphatics or absorbents, as they are called, of my left leg near the ankle, and extending above the knee; and altho' it yielded pretty readily to a cold dressing of lime-water, the fever which first attended it, and the warm room night and day to which I was sentenced, and to which I was wholly unaccustomed, completely unfitted me for the severe winter that was then begun, and lasted to the end of February. I have never felt so tender, old, and good for nothing. What time I could write, I had to give in another direction, and so my acknowledgement of that letter was deferred.

As to your other suggestion that this might have been owing to something you had said to my son on the subject of the publication by the Sanitary Commission, it was further from the fact than the pole from the equator, as far from us as the antipodes. Fie! Fie! Never think of such a thing. I did not concur with you, and I will presently tell you why; but that my non-concurrence with anything you write to me or to him could have the effect of estranging or silencing me—my dear Judge Coleridge, there is no man on earth, whose hand I have never shaken, that I love and respect half as much as yourself. A difference of opinion between us would make me think myself wrong in regard to nearly every matter of opinion; that in regard to any point it could make me think you were unkind, or wanting in consideration for me or my family, is utterly impossible.

I did not concur with you on the point of publication. On the contrary, I advised it before it was determined upon. The exchange of prisoners was broken off by the black question. Our men were starving in the hands of the rebels wherever they were in prison. I believed this to be a government, and not an army, decree; and I thought too well of many persons in the South to doubt that if they knew what we did on this head, they would act upon their government

and bring back exchanges upon the only principle on which we could admit them. And the result justifies me.

As to the question of starving and barbarous usage, do not entertain a doubt that the facts in that publication are irrefragably true. They are so indubitable that we should have had a horrid scene, if what some persons wished had been assented to by a majority of the two houses. When I was asked what I thought of retaliation in *kind*, I answered, it is out of the question; your people will not submit to it; they will break down your prison walls by their cries and execrations, and feed and clothe the prisoners themselves if you attempt to starve them, or to turn them out into the winter and cold without fire or shelter. Nothing of that. Let their own people know what has been going on among them. If that does not bring a remedy, let the government make a formal protest to every nation upon earth, with which we have friendly relations, against this departure from the modern law of war, and leave the rest to Heaven. "Vengeance is mine!" Such was my advice, and I still think it was right.

There is something, my dear sir, which prevents excellent men in England from concurring with excellent men in the United States upon hardly any point in our present controversy with the South, altho' entirely congenial upon almost every other topic. I will not say what I think it is. I think I see it in Englishmen for whom I have great respect, admiration, and even affection. Of course, I do not think they see it themselves. It is perhaps in the atmospheres that both of us are breathing, and either may be as prejudicially affected by it as the other. I think it teaches the lesson to such an old man as myself not to enter upon any such matter with one I so much love and regard as yourself. . . .

We have Canada on the North, and Mexico on the South, and our Civil War in the midst: sufficient, certainly, for the day. But nothing will come of Canada, now or at any time, except talk among uninformed politicians. I should be surprised at Lord Derby if he were not speaking for persons who want to get into power.

Mexico imports us more. I have no doubt monarchy is better for the Mexicans than a republic; tho' it is hard to say what is best

for a people who have had no government for fifty years, nor before that anything but priestcraft. If Napoleon's hand were not in it, it might give us less trouble, but we have even more suspicion of him than fear. We have more fear of England than suspicion. We think we know all that she means. She means, and has from the beginning meant, to make profit out of the law of nations, as, in our case, she says it permits her. If we were as free-handed as she is, we would not permit it for a day; nor would she if our state should become hers.

Pray write again and tell me something about the Judicial Committee, and what it is intended to do with the law of it.

*(To Dr. Lieber.)*

PHILADA., 7 April, 1865.

I am of course highly gratified by success against Richmond and Lee's army, and shall be gratified by more of the same kind. But it is not old age, I think, but something congenital which keeps down in me sudden ebullitions of joy or grief. I have a special reason to explain the absence of any jubilant outburst at present. I do not think the end is yet; and I think I perceive that mere prolongation of time and expense is to be very costly to us. The people of the rebel States are, I apprehend, to restore the Union, if it is to be restored. Our armies no doubt must give them the impulse, but the rebels must receive it and carry it on to the proper end. My convictions, determinations, fixed purposes, have all been on defensive success; for I counted no cost, no loss, as anything in comparison with sufferings and losses in body, soul, and mind, by the triumph of Southern arrogance, insolence, and slaveocracy. I have always been willing to go to the last end in offensive defence against such a consummation, even to the very last end, the jumping-off place. But after that defence was achieved I have never been able to see much beyond; and I do not think the clouds in the horizon will be lifted up to me, except by the Southern people themselves. I am not at all without hope; but with every success on our part there mingles just enough of the uncertain future to hold my feet to the earth, and to keep me from

great altitudes of joy. I do not, however, wish to repress others; and I admit that the nervous secretions are much and healthily promoted by elevated joy and triumph in a great and good cause, as ours is. I thought Napoleon's preface a piece of consummate affectation, rather than commonplace. I could not extract anything that was either new or good from its sententiousness; but thought I perceived that he was on the stage, and meant to walk in the buskin of philosophical history. I hardly expect he will tell us more of Julius Cæsar than we know already, or tell it in a better way. But this is your province, and somebody will live to see you fill it, as you can.

What that is which you are expecting to send me I do not conjecture; but any one who is writing what he wishes me to read must make haste, as I said to a gentleman who is preparing an extended memoir of Professor Silliman. The winter has been one of bodily discontent, and I perceive, as well I may, that the foot of time may be inaudible and noiseless, and yet leave its very discernible marks after he has passed on. Still the freshness of my heart is, I think, undiminished; and I feel as near to what is called faith as possible, that this will remain to its last beat. I may suffer the more for it. This must be as God pleases; but all my happiness here must come from this, and it is some ground for the hereafter.

I have not been idle myself this past winter; but you will hear more of it when I shall be ready to speak.

The last sentence of the above letter refers to Mr. Binney's third Habeas Corpus pamphlet. In July, 1864, Mr. Hamilton had suggested to him that there might be something more to say about suspension, and he had replied as follows:

As to the Habeas Corpus, I will continue to think about it, as I have done. One of my difficulties is that Congress have bed—d the subject by their Act, having first, in new and unusual language for an Act of Congress, asserted or declared the President's right in the strongest and most explicit terms, and then proceeded to regulate partially his proceedings, as if the power was their own. If I could

make an argument to justify this, I should already have tried it, and introduced the English practice before the third Parliament of Charles I., which I may suppose some of the Convention had in their eye. But I have an unspeakable aversion to get again into an argument of any gravity, which grievously disturbs my health. I will, however, think about it; and if I live to the cool weather of the autumn, I may go at it.

The result was that by March, 1865, he had completed an essay on the nature and extent of the power of suspension of the privilege of the writ, considered generally, in the light of the records and authorities in regard to such suspension in England. The investigations which gave rise to his pamphlet in no way weakened his previous view of the President's power under the Constitution, but rather convinced him that the proper limitations of the power, in the interest of liberty, could only be maintained by vesting it in the President. He did not argue the question with reference to the particular President or the actual Congress, but solely with a view to the safe and efficient exercise of a power granted by the Constitution. While disclaiming any intention to criticise either President or Congress, he confessed his inability to follow either the Act of March 3, 1863, or the particular instances of suspension either before or since the passage of that act, and he concluded as follows:

Having, three years since, entered upon the consideration of the President's power to suspend the privilege of the Writ, I have thought it proper, in a moment of greater calm, and of renewed confidence by the people in the political virtue of the President, which gives additional vigour to all his lawful power under the Constitution and laws, to show that what I then wrote did not proceed from opinions that were hostile to the personal liberty of freemen, whatever might be their opinions, within any range that does not include treasonable

designs against the United States; and that it as little proceeded from a disposition to curtail the judicial power as the Constitution creates it and the laws have organized its tribunals. If the laws work freely within the scope of the Constitution for the defence of our Union and unity as a nation, there need be no fear that either the Union or the Constitution will break down in the hearts of the people by the weight of any extra authority the Habeas Corpus clause gives to the government in seasons like the present, which the calm judgment of the supreme adjudicating power shall deliberately sanction as fairly comprehended by the grant.

In careful arrangement, clearness of statement, and depth of reasoning this pamphlet equals anything that Mr. Binney produced at any period of his life, but it is not surprising that thereafter he undertook no more such tasks. While it was in press occurred the surrender of General Lee and the assassination of President Lincoln, so that the actual publication was delayed until the latter part of May.

*(To J. C. Hamilton, Esq.)*

PHILADA., 17 Apr., 1865.

Little could you have anticipated, when you were writing your late letter to me, the horrid event that was to occur on the evening of the same day. It has shrouded us, just after the most consummate victory our arms have had, and on the eve of our Easter rejoicings. I really wept, as did all my family, on the receipt of the intelligence. When the whole scene spread itself before me,—the theatre, the lights and smiles, his wife at his side, with his friends around him, the absence of all guard, which he never would have, and of all appearance of necessity for it, and his real goodness and kindness of heart, which everybody acknowledged, and his undoubted honesty and zeal to do what he thought his duty,—it really overpowered me. There has been nothing like it in history, and nothing could have occurred so characteristic of the spirit which slavery engenders, and has in so many other instances marked the course of rebellion in the South.



## 1865] ASSASSINATION OF LINCOLN

They have murdered our helpless old men and women by their guerillas, and have left children to starve. They have starved to death, or to death's door, more than twenty thousand of our soldiers. They began in violated oaths, and in treading the honour of the soldiers into the mire, and plundering anything that was stealable. The Southern officers in the Cabinet showed themselves to be insensible to the obligations of honour and honesty. There has not been one incident or mark of that chivalry they talk of, from beginning to end; and now they, that is to say, their spirit and principles, have murdered the man who has shown the most benignity towards them, and have endeavoured to murder Seward, who had less to do with them than any other minister. Slavery, depend upon it, is the only thing that could have so corrupted the old English and Scotch blood. . . .

I should like to know what General Halleck thinks of police measures, of more stiffness and sternness of public manners, of less shaking of hands, and open access. We began right in Washington's time. His carriage suited the station. But everything that Jefferson did in measures and in manners, in great things and in small, has been whittling us down to shavings in all that regards dignity. This murder may be a reason for not riding with the snaffle at all times. . . .

*(To Sir J. T. Coleridge.)*

PHILADELPHIA, 12 May, 1865.

Your most kind letter of Good Friday brought me the gratification which comes with all your letters, perhaps more than the general very high average, from the kindness with which you took in good part my too familiar chiding for your apparent undervaluation in one instance of my assured regard for you. I am sure that we two cannot finally misunderstand each other, tho' I have seen your face only for half an hour, and you have never consciously seen mine. The touch of hands is undoubtedly a great thing to complete the electric chain; but a strong charge of positive feelings and principles easily leaps a chasm to the sympathy on the other side.

Your letter has come to me in the midst of great events in my country, and shortly after one of the most painful and melancholy

that this or any other nation has experienced from the wicked destruction of a single man's virtuous life. We have passed from tears to indignation, and from indignation to tears, continually since its occurrence. You know all this, however, by the newspapers, and I will not detain you by any description of it, or by any comment upon it.

Let me say that our political order under the Constitution was immediately reinstated, and that, notwithstanding what you may have heard of President Johnson's inauguration day as Vice-President, I have no belief that the circumstances were the effect of a habit, and still less of a confirmed habit; nor have I any serious fears for the reconstruction of the government in reasonable time, if foreign powers will permit us to come to it in peace. If the slave-holders will let slavery go, as they must, and give their aid to the application of free labor, as I think they will, they will in general be cordially assisted in their recovery, with such exceptions of personal leading, and fraudulent and cruel following only, as cannot be overlooked. It is not desired by the best men in our country, and is not probably intended by President Johnson, nor would it consist, we suppose, with either justice or national dignity, that the crime of high treason, aggravated as it had been, should be obliterated from our morality or our public policy. But this people of the North and West is, I believe, in their present temper and habits, incapable of sanguinary retaliation. . . .

Let me say, in answer to your suggestions about my further writing and printing, that I have neither ambition nor pretensions as a writer, and that if I had either or both, my waning sight precludes any effort in that direction. I hurt one of my eyes last winter by writing a paper on the nature, range, and extent of the power to suspend the privilege of the writ of Habeas Corpus under our Constitution. I differed from both President Lincoln and Congress in regard to the nature and extent of the power, and particularly in regard to the ouster of the judicial department from all cognizance of the *cause*. Though I am not particularly desirous of submitting to your eye anything that I write upon constitutional law, I will send you a copy in a few days.

Same day.

I was about closing my letter, when the postman brought me your last of 27 April.

I knew you would condole with me, and as sincerely as possible, and more on my account. I knew you would tell me so. But Mr. Seward lives, and is recovered from the stabs of the assassin, and from all but the injury by the fracture of his jaw, when his horses took fright, and he was thrown or jumped from his carriage. The parties to the assassination are now on trial in Washington.

I am able to add that we have this moment official intelligence that Jefferson Davis has been captured, with his wife and official family, in the southeast of Georgia, seventy-five miles southeast from Macon.

15 May.

We have further official intelligence that on the 10th May a regiment of Michigan cavalry surrounded his camp an hour or two before daylight. Another regiment of Wisconsin cavalry in the same pursuit, taking the Michigan regiment for rebels, attacked them, and lost some in wounded on one side, and two killed on the other before the mistake was discovered. The firing alarmed Davis, and he put on a dress of his wife and attempted to escape in the woods, but was betrayed by his boots and taken. We have as yet no account of the gold and silver he was trying to run off. Cromwell, I think, would not have done this. How it would have been with Napoleon I. I will not surmise.

*(To Dr. Lieber.)*

PHILADA., 26 June, 1865.

I send you by mail this morning two separate copies of Part III. . . .

If you think the last paragraph of my pamphlet is not transparent, I would have you recollect that the Act of 3 March, 1863, intercepts the Supreme Court, or rather, meant to intercept it. I meant to reprove the attempt by saying that no power which that tribunal could deliberately sanction as fairly included in the Constitutional grant, would alienate the people at such a time from the

Constitution and Union. That was of course the same as saying that it was impossible for the Supreme Court to deduce the power of imprisonment without cause or offence from the Habeas Corpus clause.

Upon the whole, I do not think the ruler in this matter at Washington was candid in regard to Part I. In the Proclamation in Sept., 1862, the executive power was clutched, and then extended in two directions, directly against the express warning of that paper,—1, by general and prospective suspension; 2, by ignoring the necessity of any complicity with rebellion; and Congress sanctioned both excesses. If there had been a reasonable intimation that the government did not think I had gone far enough, I should have been satisfied; but they left me to be taken as the suggester of all. I always intended to leave a denial of this behind me, doing the government the least injury in my power; for I heartily wished them success in every point and particular of the contest. . . .

## XV

## LAST YEARS

1865-1875

ON the morning of December 5, 1865, Mrs. Binney passed away. For more than seven years she had been crippled by rheumatic gout, bearing her ever-increasing sufferings with the utmost patience and cheerfulness. The loss was keenly felt by her husband, then approaching his eighty-seventh year, but he bore it as one who expected a speedy reunion. Nine months later his son Horace wrote of him: "I do not think that he is less vigorous in body than before my dear mother's death, but sometimes he seems so. I begged him to come up with my sister Susan, and let his grandchildren take him about in this picturesque region [the Delaware Water Gap]. He replied that though his legs were pretty good for his years, they were not what they had been, and that he meant to stay at home or near home, and prepare his wings. The words show whither his thoughts are constantly winging. I perceive no difference in the activity or vigour of his mind, and he continues to take a quiet interest in national politics."

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 28 February, 1866.

I cannot tell you how much your letter of 26th Dec. affected me. It came to hand only on the 24th of last month. Your interest in my great bereavement was soothing to all my family, particularly to my daughters, to whom I imparted your letter; and the trouble you had

taken to copy for me the affecting memorial of his wife, by Jones of Nayland, was as strong a proof of the sympathy you felt, and of your desire to turn me to a case of like affliction, remembered and sustained by this good man in a most affectionate as well as Christian spirit, as I could have received from a brother. I thank you for it, with all my heart. Jones of Nayland is well known here. We have esteemed him so much as to reprint in this city a part of his works, all of which I believe are accessible to me in our City Library; but his letter to Dr. Glasse was not previously known to me. In several respects I could follow him in calling up the characteristics of my most pure, loving, and beloved wife. I have not at this time, however, the disciplined and composed spirit to attempt a parallel for your eye; but if you will imagine a union of nearly sixty-two years—and for a large portion of that time you can have no difficulty in doing it—of mutual love and esteem, cemented on the wife's side by as sweet a temper as was ever given to woman, by a graceful person and carriage, and by a most wise and watchful care and discretion in all that regarded the education and principles of her children and the order of her household, and without a single instance in all that period in which she gave cause or thought of reproach to any one in the relation of husband, child, or friend, you will require nothing else to show you what a grief her death has been to me. I strove for many years to dress my temper, manners, and good will to all in her as a mirror, and I am grateful to her for the effect of it. I have never felt from any other example so strongly the truth and the consolation of St. John's declaration that, "If we love one another, God dwelleth in us, and His love is perfected in us. Hereby we know that we dwell in Him, and He in us, because He hath given us of His Spirit." Though for more than six years, after an active, temperate, and healthful life to the age of seventy-six, she was confined to her couch by rheumatic gout, and was deprived of hearing except thro' a trumpet, neither her care for her family, nor her interest in her children and many descendants, her friends, or her poor connections and dependants, ever abated a jot. Her beautiful eyes and her love of reading and the composure of her mind continued without change; and while for active super-

intendence her place was necessarily supplied by an unmarried daughter, now of priceless value to me, yet her judgment, her accurate memory, and her affections continued to be the resort for consultation and direction to the last month of her life. No man, I think, was ever bound to a wife more than I was to her; and since her death I have in twenty instances half-turned to that empty chair, as if I could again refresh or assert myself by that communion to which we were so much accustomed. I hope to find it elsewhere. I know that I must soon follow her; and I devoutly wish that I may be worthy to follow her. I cannot trust myself to record for you the touching proofs, in her few intervals of rest during the last fortnight, when signs rather than words had to pass from us to her in response, of her desire to be at rest, while her love for all she was leaving was as vivid as it had ever been, and of her only wish that we should not pray for her continuance. She expressed with great strength her confident hope of pardon for her sins from the mercy of God; and took with her out of life the same loving heart with which she had lived in it for nearly eighty-three years. I beg you to excuse me, if I have said too much.

I hope it will be agreeable to you to learn that, although we have had a rather severe winter, and of course a very retired one, my health is still fair, and that recently I have been able to resume my exercise on foot, so necessary to the continuance and enjoyment of it. From your remaining so late at Heath's Court, and your saying nothing in your last letter about your removal to Torquay, I infer that your own health has improved, and shall be glad if your letters shall hereafter confirm it.

You will learn at about the time when you will receive this that our return to a harmonious Union is threatened with some obstruction, by a difference of opinion between the President and a large majority in the two Houses of Congress. It has appeared formally in regard to the enlargement of the powers given by an Act of Congress during the time of Mr. Lincoln, and still in force; but from the President's declarations at a public meeting in Washington the difference goes further. His veto of the Freedman's Bureau Bill, which two-thirds of the Senate, where the bill originated, did not suppress, though the

bill had passed that body unanimously, would not of itself have caused the sensation which has ensued; but his language at the public meeting was in a high degree undignified and indiscreet. Some of our papers speak of it as a repetition of the scene at the President's inauguration as Vice-President. Privately I have heard another matter suggested,—an unsound condition of mind. I have not at present a decided opinion upon the merits of the real question,—the immediate restoration of the Southern States to representation in Congress,—further than this: that I am clearly of opinion that some amendment of the Constitution ought previously to be made, changing the present rule of representation, which would augment the representative numbers of those States by the whole number of freemen, blacks included, after the census of 1870. There are members in both houses, some of them what are called extremists, who would institute universal suffrage and let all freemen count without regard to colour. The President is the other way. I incline to leave the question of suffrage to the States until after the next census, perhaps longer; but after, say, ten years to give the right of suffrage to every freeman. The question is a very difficult one, both practically and theoretically; and so, indeed, is the whole question of securing practical freedom to the late slaves, now constitutionally free. It may give rise to fearful parties. My own fear is that it will bring back the old predominance of Democracy, which you know I do not like. . . .

*(To the same.)*

PHILADELPHIA, 7 Aug., 1866.

I am thankful to you for your letter by Dr. Leeds, and particularly for the copy of your notices of Mr. Keble contained in the packet to my son; also for the photograph, which seems to be a copy of a better one which you sent me in Sept., 1860, and which since its arrival has been framed and is suspended in one of my offices where I habitually sit. . . .

Your notices of Mr. Keble are most interesting, and excellent in all points. It was the perusal of some or all of these in the *Guardian* that made me think, and, I believe, say, in a recent letter, that



you were not likely to approve entirely a further notice or life of Keble, written by another person. You knew him so long and well, and loved and honoured him so sincerely, and appear to have so well-defined a judgment in regard to his qualities, and faculties, and withal so careful a pen in your account of him, that his full biography by any other writer must be an extraordinary one to satisfy you. I have never read biographical notices of any one that pleased me in all points as well as yours of Mr. Keble. The good taste of them all is as striking as their pure affection and perfect respect for their subject. But I am never to know him better in this life than I do by what you have written of him.

The events of the war on the Continent have been so different from the general expectation, and have come so rapidly upon us, that few seem ready to express an opinion of the final result. It will be very strange if England shall have nothing to say in regard to what seems to portend a complete change in the conditions of such States as Austria and Prussia. Perhaps it is well for England that Lord Derby's ministry has not strength enough to go far towards intervention, if there should be an inclination for it. We are brought up here, you know, to believe that if a people are strong enough to take care of themselves, alliances and even very close and intimate relations with other governments are undesirable. We call them *entangling*, and avoid them. Surely if any nation is sufficiently strong for this purpose, it is England. The main point is to unite her own people, and to content them reasonably with their representation. Whether she will be able to do this is the great question. I heartily wish that you may get to the good end of it, if there is one, but if the development of the political mind in England shall resemble what it seems to be approaching in religion, according to some accounts, you and I may deem ourselves fortunate in living before the age that is to witness the promised improvement.

We shall have a very animated canvass for the House of Representatives in the next autumn. A very large convention is to take place in this city on the 14th instant. It will consist of the most prominent men from all parts of the Union who wish to sustain the

President. In the beginning of September, one on the side of Congress will meet in the same city. And from these we shall learn the issues we are to decide upon; and the coming vote will probably settle the matter for a couple of years. But although I take no part in politics, I cannot make up my mind on either side. In my judgment there is wrong and right on either side, and no one will be able to separate in his personal action the wrong from the right. In such a case, are we bound by sound ethics to take neither? I rather think I shall try to quiet my conscience by voting for the men I think the best. But what do the best men become in party action? . . .

*(To the same.)*

PHILADELPHIA, 22 Nov., 1866.

The course of the President of the United States, shortly after I received your penultimate letter, was so extraordinary that I deferred writing to you until I should learn the result of the elections that were to follow! and now, when I sit down to give you a short account of this, I am gratified by receiving another letter as recent as the 3d of this month, so full of kind remarks, and suggestive of other topics, that it has put President and elections pretty much out of my head. I may say, however, in regard to that subject, that while the President, in the progress of his late tour, was sometimes indecent, and always unwise, and the elections have answered him with all but unanimous opposition, I have some fears that Congress may, at its approaching session of December, imitate his violence and attempt his removal by impeachment. I sincerely hope that this will not happen. Of the sufficiency of the alleged grounds for impeachment I have not formed an opinion; but supposing their sufficiency, the condition of the nation, the incomplete representation of the Union in Congress, and the still more imperfect provisions of the Constitution for such a case, together with the excitement which the impeachment will produce, make the prosecution of an impeachment most inexpedient. What is especially wanted, in rebuke as well as remedy for the alleged excesses of the President, are dignity and moderation with firmness. These, I think, will exonerate the people from any

## 1866-67] PRESIDENT JOHNSON'S POLICY

discredit abroad, through the conduct of the President, and prove a sufficient remedy for anything he has already done. If he shall positively obstruct the operation of the laws of Congress, another remedy may be required; but I have not the least fear, nor do I learn that any one has, of the application of military force to the case on either side. The character of the American soldier, as well as the nature of the controversy, is supposed to make such a recourse impossible. In a few weeks we shall be better able to judge of the whole matter; but I cannot omit writing in the mean while. . . .

Reform threatens you, and I suppose will continue to do so for an indefinite time. I should like to ask an English reformer, of the most moderate and reflecting character, whether he has fixed in his own mind a *limit*, and what it is; and if he has fixed such a limit, I would ask him to prove that England would and *could* stop at that limit. If he could not prove this, I should say reform will have no *end*, but a change of government. Universal suffrage means universal power of the people, in their totality as numbers merely, to do what they please with their government. Mr. Bright, I suppose, means revolution.

My son Horace thanks you for your kind remembrances in your last letter. He is as good a son as lives, and wanting in no quality that is necessary to his father's happiness.

May I beg you to present to Lady Coleridge my sincere and affectionate respects. I assure her that there is as little formality in this as I trust and believe there is in the kind messages which your letters have more than once conveyed to me of like nature in her behalf.

(*To the same.*)

PHILADELPHIA, 18th April, 1867.

I am grieved to learn from your letter of 25th March that you have been ill; and only something less so, that since the pressure of your attack has passed away you have been put upon a short allowance as to reading and writing. If your illness was attributable in any of its symptoms to an overworked brain, nothing could be more reasonable than the limitation; but it went to my heart to learn

further, that perhaps your engagement with the life of Mr. Keble was among the employments which led to these symptoms. Although you appear to consider that as only *seeming* overwork, my own experience would lead to a different conclusion. . . .

I don't wonder that you are perplexed by American politics,—the politics of reconstruction. It is not easy for many Americans, even those who concur in the main, as I do, with the measure of Congress, to understand and approve them. It may surprise you to hear that, among other methods of overruling the Reconstruction Act, recently passed over the President's veto, leave has been asked of the Supreme Court by more than one of the late seceding States, to file bills to enjoin the President not to execute the Act because it was unconstitutional. The President himself directed the Attorney-General to oppose the petitions; and after argument, the Court refused the leave. I do not hear of any dissent among the Judges. In consequence of the division, 5 to 4, on the constitutionality of the Test Oath and of the Military Commission, this plan of filing bills of injunction has probably been attempted to draw the Court into the ranks of opposition against Congress. It will be equally bad for the court and the country if they should succeed upon any grounds that are not perfectly firm.

I cannot help expressing to you my opinion that the President himself has been the voluntary cause of the rather ominous aspect of this question of reconstruction. Without a shadow of authority that I can perceive in the Constitution, he assumed to do the whole work of reconstruction himself. When the Southern armies surrendered, and his power as commander-in-chief became almost null, and his executive power wholly inadequate to the work of either treaty making or legislation, he did not convene either House, but went on, *velis levatis*, as if there had been but one power in the land, to determine all the new relations that had been produced between the seceded States and the Union by the abolition of slavery, by the abandonment of all the former constitutions of the States on their own part, and by the forcible overthrow and extinction of all the new ones they had adopted. This was the origin of our present difficulty. He con-

## 1867] PRESIDENT JOHNSON'S POLICY

nected with this usurpation a policy—*his policy* he called it—which flattered the Southern people, and intensified, if it did not even breathe life into, the hope of the South, then apparently extinct, to gain by restoration a position in the Union from which they could renew their opposition to the Union. I have always sympathized deeply with the desire of the ruling party in Congress to defeat this policy, and to put an end forever to all attempts to restore slavery, either in form or substance, or to administer the government in such a manner as would prepare another secession. I need not express any opinion of the President personally. I shall, if I live, rejoice to see him leave the office, to such peace and obscurity as he will find at the end of his strange career.

As to your questions of reform, I fear you will have them renewed, until you will get something into your Constitution that will disturb you as much as imperfect or incomplete representation does now. My hopes, I believe, are the same as your own.

My son Horace thanks you for your kind message. He requests me to say in advance of what he may write you at another day, that the course of some persons in New York in regard to the Keble memorial has given him the labour of much correspondence and vexation of spirit. The alteration, by Mr. Keble's direction to his executors, of a line, indeed a small word, in the "Thoughts in Verse" on the Gunpowder Treason, has been the occasion of comments which greatly disturb the progress of the memorial. He perseveres, however, and means to persevere; though I suppose he fears that what shall be done in Pennsylvania will be done without concert with New York.

I beg you to inform me by letter, if only of two lines, that your health improves. I do not ask for your revisiting the life of Keble until some months are past; but I shall be anxious for your health till I hear of its restoration.

Give my best regards to Lady Coleridge and your family. I am delighted with what you say in confirmation of what I learn from other sources of your son's high and lucrative position at the bar. His course in Parliament has been just such as I expected it would be.

(*To the same.*)

PHILADELPHIA, 4 Nov., 1868.

I renew my salutations to you this morning, after our election yesterday of President and Vice-President, resulting in the choice of Grant and Colfax by a vast majority. The morning's paper gives a result of 233 electoral votes for Grant and Colfax out of a total of 296; and to shew the power of the telegraph, the editor of one of the gazettes says that he had received returns during the last night and the present early morning from every State in the Union but three.

I am tranquillized at present by this result; for a more dangerous combination than that which was opposed to Grant and Colfax it is impossible to conceive; the worst certainly that in my long life I have known. It not only threatened a new rebellion, but, in preparation for it, the ruin of the public credit and the utter prostration of public morality.

The complete failure of so flagrant a conspiracy tranquillizes me, therefore, for the time, and the peace which it promises for a few years to come would suffice for *my* time, if I looked no further ahead; but the cause, to which I have often referred in previous letters, as likely to rule the condition of government in this nation, still remains at work, and will at no distant day recover its influence and restore the sway of democratic government of the worst kind. The North and the South will never have the same public interests, either foreign or domestic. They will continue to be divided from each other in every way but one,—the wish and the ability to combine for the purpose of ruling the national government; and they cannot do this with success, except by a union of the worst sections of Democracy in the North with the false and hypocritical oligarchy of the South. When I say never, I ought perhaps to say for a long time. But the spontaneousness with which, after such a rebellion, they have come into such a combination as [at] the recent election, shews an elective affinity deeply seated, though of a very strange kind. However, I will say no more of our politics.

## 1868] ELECTION OF PRESIDENT GRANT

Tho' I am your debtor in every way, I have desired much to hear of your health during the last semestre. Your son is often before me in the newspapers, or in blue-books; and if he is doing as well in health as in professional and public service, it should satisfy his father, as well as his friends. But my sympathy is more naturally with you, and my longing has been in this direction. If it does not interfere with your convenience, or the advice of your physician, let me have a short letter to inform, and I hope relieve me; and if you can say a word about the Memoir of Mr. Keble, the more pleasant will be the relief, as it will shew that your work is accomplished, and my life perhaps not too far spent to enjoy the fruit.

My course of life in the summer and autumn seems to promote the kind of health which is allotted to my old age,—not vigorous in the proper sense, rarely permitting considerable effort, but rarely or never calling for medical advice, enjoying a fair appetite, exempt from every pain of body, a very fair sleeper, and sufficiently indifferent to our hot weather. I drive from town to country during the summer, dividing my week between the city and the fields, and taking from my daughter's family of eleven children, more perhaps than from the healthful air, the animation and spirits which are so conducive to equable health. I really want nothing, now that the political battle of the day has been fought and well won, but to see you, to hear you, to feel your hand, and to look into your eyes. But the photograph which hangs before me is all that I shall see of you *here*. I think it is not a bad wish for me, that I may see you hereafter, face to face.

In a letter to Mr. Hamilton, written on November 21, Mr. Binney said, "So far as bodily health is concerned I am about as well as a month ago, and much better in regard to ease of mind on the probable events of the future four years of our country. The election of Grant has quieted many fears, and has inspired great thankfulness for the certain departure from office and influence of Johnson next spring." This feeling of satisfaction, however, did not blind

him to a less pleasing feature of the election, an evil which has of late become more serious in Philadelphia than it was in 1868, so that his words of warning might well be repeated to-day.

Unless [he went on to say] we take the lesson which the frauds and violence of the last election teach us to our very hearts and souls, now and constantly onward, to kill and not simply to scotch this terrible anaconda, our election rights, which is to say, all our political rights, in no long time will be as worthless as a mess of pottage. Tell your Union League not to pause, nor put off to another election, the efforts which the evil demands. It involves not merely public faith, but private property and both public and private liberty. It must convert all laws into one, the law of force, unless the best part of this nation means to be trodden under foot by the worst. Now and to-morrow and the next day and continually the friends of honest and upright government must not only be awake, but stirring. The course ought to be to expose and lay open the frauds and violence to the bottom, though no hope of immediate relief shall come in any case. We should search and go to the quick in every case, by either party. I do not say I hope, but I think I know that there is no other mode but instant, constant, and continued exposure. This I have said here, and shall say so to the last.

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 4 April, 1869.

Neither am I going to write you a letter just now, having done more than enough, in my double sheet in February. Nevertheless I feel as if I were loaded and primed for another *salvo* to express the honour and thanks I owe you for your charming memoir.<sup>1</sup> In all sincerity I think it the most effective and best biographical work I have ever read. My son Horace thinks the same for himself. I do not know when I can get it out of his hands again for another reading.

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<sup>1</sup> Of the Rev. John Keble.



He says he keeps it for his Sunday reading; and I agree it is very good for that. But he would have done better for me if he had followed my plan of putting together a week of Sundays, and reading it twice. It would have had a third and perhaps a fourth reading by me before this time. All concur in its praise, I see, on your side of the water,—high, broad, and low, with just such preferences as make the harmony richer. One at least of your critics agrees with me in thinking that it is as good a portrait of yourself as it is of Keble. But I say no more of this just now. I confess I am not glad that Keble's letters to Froude have been found and sent to you. Keble wants nothing, I think, that is likely to be obtained for him from that source; and perhaps there may be a little more of his severity to recusants in his letter to a brother enlisted in the same war. However, Keble and Froude may be trusted safely with you and you with them. I hope the letters will not aggravate the labour of the new edition. . . .

*(To the same.)*

PHILADELPHIA, 16 July, 1869.

If I had written to you as often as I have thought of you since I received and read and re-read your memoir of Mr. Keble, I should have heard the groans of the post-office, tho' I should not have heard yours; for I have learned from that memoir, I think, that you are a person who does not groan audibly under any weight; a great comfort to me, when I find this in a correspondent. I learned *that* among other things from that book, which will be precious to me while I live; the sum of all, in one aspect, being, that there will never be so good a biography of you as you have written of yourself in that work, without using a word to that end purposely. I might better say "portrait" than "biography." The biography will say more of you, and more particularly; but it will say nothing truly, which some of your features in the Memoir do not express with perhaps more persuasive truth, and with a resemblance that will strike better than any description. You are, according to my notion, the happiest author of my time, to have written, out of unprepared materials, and after no serious study, the most pleasing and popular memoir of the whole

century, at an age when you thought your writing faculties were gone. All my children have read it. I have read it three times, and parts of it a fourth, in the second edition; and we are all of one mind, that it is entirely felicitous, both in its scope, as you assumed it, and in its execution, and that no one ever succeeded better in making everybody love his friend as much and as justly as he loved him himself. If this praise is disagreeable to you, I must beg your pardon; but I do not see why it should be, for it has not the least particle of insincerity in it, and is, moreover, the only return we can make for your care for us in the preparation of the book.

You will not object, however, to a word or two of more direct praise from me of what I think was Mr. Keble's most striking attainment. My opinion is not altogether derived from your Memoir, though the Memoir verifies and confirms it. It scarcely comprehends his classical and theological learning. I am incompetent to judge it. Nor does his poetical imagination enter into it, though I have loved the "Christian Year" since I first read it, and love almost all of his verses in the "Lyra Apostolica" and most of his "Lyra Innocentium," and several of them, not all, in a collection of his poems made since his death. Indeed, if I had been the collector, I would have omitted a few that the anonymous collector has published. None of these excellences are in my view when I am thinking of his greatest characteristic. It is his religious faith, and of the right kind, I mean, proved by his works. This thought of him, as a distinction, came to me when I was reading his Parochial Sermons; and it is corroborated by many of his personal habits, which I need not advert to. But *all* Scripture is, with him, written by inspiration of God. He does not make any argument for it, nor, as I recollect to have met, any assertion of it; but you see it in almost everything that he writes, without his saying it. Whether the going back of the sun upon the dial, or the parting of the waters of Jordan, or any other miraculous event recorded in the Old Testament, he speaks of it, dwells upon it, or applies it with as much assurance of its truth as he would manifest in speaking of what he had seen with his own eyes. He undoubtedly so received and held it as infallible or very truth. And this degree and kind of faith,

I regard as an inestimable blessing to the people to whom such a man preaches and ministers. I have long thought that the reason why so many persons of good lives held back from the profession and practice of our faith, is that they know or hear of so many persons of good understanding who doubt. Doubt is contagious,—very,—more so, I think, than the cholera. But, on the other hand, faith, the deep, habitual faith of any man, but most especially of a man thoroughly versed in the Scriptures as Keble was, reflected in his whole life, and even at times in his very silence when the subject is broached or touched unnecessarily, or by his distress when brought in irreverently or loosely, is even more contagious. There is a wholesome fear that helps it, which doubt has not. I have never read any sermons which gave me more comfort than these, while they make no literary or theological display. They were written to make people, simple people, believe; and they must have that effect upon all minds, simple or cultivated, disposed to believe. Excuse me for saying so much of the book you were so good as to recommend to me.

There is nothing on this side of the water worth knowing that you do not probably know, through your own papers, as well as I do. I have come to the conclusion that I shall not be satisfied with things in our government while I live; and therefore I do not look much into them. I do not see that we have great intellectual power, or what is called statesmanship, in our present administration; but I have some confidence, and not a little in the President's integrity or fairness of purpose, in regard to all public concerns. Our parties are wild, and will be so after the Indians shall have been tamed or killed. I do not believe that Mr. Sumner's speech has set our people wild on the subject of our claims upon England; particularly not the Cabinet. I suppose there will be little attempt to renew negotiations until the public mind in England is to some degree discharged of the Church question. Our Cabinet I think is quite right as to Cuba, and I believe are more likely to be right in regard to all other matters than any Cabinet headed by Mr. Seward, to whom I never was able to give much confidence. He was more of a politician than of a statesman. Fish may not be in some points as able, but he is thought to be safer.

I hope and believe that there will be a good and sure settlement between yourselves and us. You ought not to have been surprised by the rejection of Johnson's treaty. It would have been to me a strange thing if, in the high tide of party here, a Republican Senate would have allowed such a President as we had, to say nothing of the negotiator and his dinner speeches, to get the credit of any treaty with England, whether it would or would not have settled matters. The better and certainly the safer course would have been to have kept off the negotiation, until after the election of the new President.

We have intensely hot weather upon us. Thermometer in my *cool* office, with pretty large open garden and much shade, at 87°; but it is now 1.20 P.M. My daughter and my son's family are at Newport. Too cool generally in summer, for me; or rather too electric or non-electric. I never was sufficiently warm there. I am in the country ten miles off, with one of my daughters and her eleven children, all good children, three or four days in the week. There is my restorer of anything that the rest of the week here wears or wastes away. And that is very little. The native air is still good for me, and my health at eighty-nine and a half very comfortable.

I hope, my dear friend, that yours is so, and may long be so. You have earned it, better than I have.

Present if you please my respectful regards to Lady Coleridge, and to your son, the Solicitor-General, and his; and say that I really think I am a "loving old man," for I love those who are loved by those I love, whether they permit me or not; but that I do not pretend to be half as "wise" as the word gives me out for.<sup>2</sup>

(*To Dr. S. A. Allibone.*)

4 January, 1870.

I thank you with sincerity for your kind felicitations. How I have walked or crept up to ninety passes my comprehension. With

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<sup>2</sup> This refers to a passage in the Memoir, where Sir John had written, apropos of certain American admirers of Mr. Keble, "I have the great honour to count among my friends, only through the medium of a long and intimate correspondence (for we have never met), that wise and loving-hearted old man, Horace Binney, the great citizen of Philadelphia."

little or no care of health, often exposing it, never making a cosset of it, eating, drinking, like my companions, with early or late hours, as pleasure or work required, I have *got on*; and after this dream of so many years, wake pretty fresh to the fact that they are all gone and have produced little fruit. If there is any secret in my endurance, I rather think it lies in my not taking *long steps* at any time, or in any kind of progression; and I have no similitude in any wood of the forest except it may be barren oak, a capital wood to last, and not bad to burn, but I think producing nothing better than few and small acorns. I am not at all proud of them.

One of the greatest wonders of my time is how I got into your "Dictionary of Authors." But there is one truth, to which my long life has given as much emphasis as almost to any other of my experience. Marriage and friendship, birth and death, health and sickness, promotion and neglect, and, in general, good and evil are prodigiously affected by what is almost the greatest of accidents,—proximity, nearness in point of distance, to the promoting, formulating, or determining cause. My real friend on the matter of longevity (if it be a good) was my proximity to a place for superb health for four years from eight to twelve, and thence from twelve to eighteen to another place for like benefit to body and mind, both in the country, the first near and the next two degrees north of my native spot, which was within gunshot of my present residence in Fourth Street. But the motive cause of each country change was proximity to my family. So in many others of the most material events of my life. So also, though not for me, nor for you, perhaps, likewise, I have got as an author into your most capital dictionary; so far as I have gone in my delectation in the only volume yet published; the only thing that can challenge the quotation,—

"The thing we know is neither great nor rare,  
We wonder how the d—l it got there."

Proximity has done me that good or ill, and it has done me a good many other services or disservices of various kinds.

Do not think that this is mock modesty.

I want to live to see your forthcoming volumes, and to possess to the last the eyesight to master the necessarily small type.

Towards the end of January Mr. Binney's oldest son, then just sixty-one years old, and up to that time in seemingly good health, was seized with a sudden illness, from which, after a partial rally, he died on February 3. This loss of a son whom he not only deeply loved, and who deserved such love if any son ever did, but whose strong character and clear intelligence were as a firm staff to the father in his great age, was indeed a crushing blow. It would have caused no surprise had it proved too much for his own hold upon life, but his extraordinary vitality being matched by abiding faith and perfect resignation, he was able to bear up without apparent diminution of either bodily or mental vigour. In fact, although his son's death threw upon him certain professional duties which he would otherwise have escaped, he was able to perform them without serious injury.

The death of Horace Binney, Jr., removed the one man who, as far as intimate personal knowledge went, would have been the best fitted to prepare some record of his father's life whenever the time for such a work should come. Those friends who were anxious that there should be such a record seem to have brought before Mr. Binney the question of a literary executor, if not biographer, as the next letter indicates.

*(To Dr. S. A. Allibone.)*

245 S. FOURTH, March 1, 1870.

I regretted not to be able to see you with Mr. Winthrop; but I have been partly indemnified by reading his beautiful eulogy upon Mr. Peabody.

Your sympathy in my still fresh and grievous affliction is very grateful to me. I have received so many evidences of like feeling

## 1870] DEATH OF HORACE BINNEY, JR.

from persons known and unknown to me, that the reversal of the general course of nature, and so unexpectedly and strikingly in this instance, seems to have made an intensive impression upon those who have known the name and relation.

What my dear son would have attempted from his filial love, had he survived me, I cannot say. It is no aggravation of his loss that his deep affection for myself and all my family will not now mislead him. As to my own provision for what you are so obliging as to suggest, it is now still more remote and unwelcome than the thought has always been; though your own aid would be the most friendly that I could find, and the most judicious, were it not required to be creative. Whenever I have been invited to think of the subject, I have been saved by one vanity from falling into a more dangerous one. I think myself too good a judge of books to be misled by the vanity of thinking that anything I have written is worth preserving in a more permanent form than I have hitherto given to it.

You will permit me, however, thus to close my note, after assuring you that I am,

Dear sir,

Faithfully and cordially yours,

HOR: BINNEY.

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 14 April, 1870.

You have been very considerate in writing me two or three times since I informed you of my great bereavement; and very fortunate has it been for me, as I could not have entitled myself to the favour by my own letters, as I have been pretty much under a medical interdict against reading or writing since the middle of March, or when I received and answered a very kind letter from the Solicitor-General. The cause of the restriction upon me was overwork, imposed upon me by the death of my son,—work which was indispensably necessary to be done, and which no one could do for me, for it was the getting back into my own consciousness the affairs and accounts of an important trust for two French ladies in Paris, daughters of a gentleman in this city, of whose will I was the surviving executor. The

trust was created by his will, and after I had settled his estate, and held the trust alone until I was seventy, my son was at my request made a trustee, and to him I had committed everything for twenty years, looking to his conclusion of it as survivor.

You cannot imagine the distress this duty of settling and closing the trust myself brought upon me, until at length the sympathy between my digestion and my brain brought on some symptoms which alarmed my children and placed me under the orders of my good family physician. Thank God! the accounts are all ready for settlement and the appointment of a successor, and the symptoms have abated so much that I am partially restored to my old liberty, and hope the opening spring will emancipate me as much as so old a person can be. . . .

I have not read Dilke's "Greater Britain," nor has it, I think, received much notice in our best literary paper, *The Nation*. I must say that since De Tocqueville's book, I have read few English or French books on this country. In general they are entitled to little confidence, and as little in praise as in dispraise. De Tocqueville was a rare man. He knew something before he began to describe our institutions. Modern travellers in this country get their facts and make their meditations as they travel, and without shaking them down into place or *out* of place, which, as to many of them, would be better.

My paper is at an end, and I must stop. My head, moreover, spins a little. I rather think, my dear friend, that I have received a wound which is immedicable *here*; but I have resolved to complain of nothing, since I have received infinitely more in this life than I can repay by my best behaviour.

My kind regards to Lady Coleridge. May God bless you both and all.

(*To Dr. S. A. Allibone.*)

7 January, 1871.

I thank you for your kind enquiry. My health is fully as good as it ought to be at *ninety-one*; and whether it be or not, I am content and thankful. Mere age, however little of itself, seems to be regarded



by the world as a *merit*, or an *achievement*, whereas it is not either one or the other. Of the men you name, age is the least of their distinctions; and altho' they lived to nearly the same age, their merits were of very different kinds and degrees. My impression is, that the fame of Lord Mansfield will last longer than any of them. He was in my opinion the author of English Commercial Law, and he produced an excellent system with very little aid from any other quarter. He was, moreover, a statesman, orator, and accomplished man of letters. There is no point of comparison, that I know of, between Mansfield and Kenyon. Kenyon had little that was great or very distinguished in any department. Eldon was a great equity lawyer and judge, and, I suppose, a very good common lawyer, while Mansfield was very little of the one, and was surpassed by many in the other. Lord Stowell was a great admiralty lawyer; and I know him in no other department. His brother Lord Eldon's old age, retained his faculties much better than Lord Stowell, but Lord Stowell was thought to be much more generally accomplished. I do not mean by these remarks to make a comparison between any of these eminent men, for there is scarcely contrast apparent between them to admit of it. All of them probably were not great men for *all time*. Mansfield in my mind comes nearer to it than either of the others.

(*To Sir J. T. Coleridge.*)

PHILADELPHIA, 7 Feb., 1872.

An alarm which the cable has brought us from England, for the continuance of our good relations with her, and which a copy of the Queen's speech or address at the opening of Parliament has to some degree allayed, makes me think of my relations with you, which are beyond disturbance, and will so remain, I think, whatever may become of those of our two countries. The Law of Nations will find it difficult to make us enemies, whatever our countries may be. It ought to have had an exception for friends so much beyond the fighting age.

A letter which your son wrote me from Heath's Court, when he was about leaving you to resume that awful Alexandrine, the Tichborne case, made me a little anxious for you, from the fact he informed

me of, that your friends had asked you to take part in some approaching appeal to the Judicial Committee of the Privy Council. I knew it would be the best thing for the Church, but I feared it as the worst for you. But your letter of December relieved me, where you say nothing about it, and enclose for my daughter violets and a primrose, and a heart's-ease just pulled from your mid-December garden. Such a climate for old age, and I suppose a natal climate too; what an ungrateful change to London! Here we at that time were bound up in ice and snow, and with frequent tho' not deep snows we have kept on, and so we shall probably continue until to nearly the end of Lent.

We at last possess in the city a great winter luxury, even more than it is in summer,—a park of I think twenty-four hundred acres, including, though its *medium filum*, the river Schuylkill. The grounds are in great part covered with noble forest-trees, and the views extensive, embracing city, country, and river, and the roads, now finished on the western side, so as to make as good a drive as I ever saw in Europe. This has been a great recreation for me and my daughter nearly every day thro' the winter. With plenty of wraps in the close carriage, we have uniformly been able to drive with one glass down without the least inconvenience. This I think has greatly contributed to my health, which would otherwise have suffered from my inability to walk to any extent on our bricks, for they are generally uneven, lying at different levels or angles, and turning me from side to side most disagreeably, and not safely. Indeed, I have pretty much ceased to be a walker; and had I still none but the winter country roads to drive over, I should have no exercise at all. My health is now better than it was a year ago. I know not that I have any other complaint (disease) than old age; of that I make no complaint whatever—rather *thanks*.

We have been greatly distressed by the death of your nephew, Bishop Patteson. Some years ago, in one of your letters, you wrote of him to me, rather more, however, in relation to his father, your brother Patteson, and his urging him to leave him on his mission, tho' assured that father and son were to see each other no more in this world; and your last letter makes me know more about him, and a

writer in the *Spectator*, his college friend at Baliol, Oxford, still more. A most interesting person he must have been. His death was martyrdom in reality, though not of either of the three kinds which a note in the "Christian Year" speaks of—in will and deed; in will, but not in deed; and in deed, but not in will. The will was always there, no doubt, and his preparation always made for the duty when it should come; but the duty was not present, and even the poor savages did not mean to kill their best friend, but mistook him for an enemy. So, at least, seems to be the version we get. England should look to her subjects in that quarter, both for defence and punishment. . . .

Still the Tichborne case goes on. It makes me doubt whether the law is not in fault for some defect of provision in the case. A statute of Pennsylvania while I was at the bar, years ago, rejected the exception in an early statute in favour of persons beyond sea. How long should such a person, knowing that his ancestor is dead, and that he is the heir, be permitted to linger abroad before he comes to claim his estate? In these times of steam and lightning speed over the world, the license of all limitation statutes requires looking to.

Your son's admirable opening of the defence must have been a gratification of the highest kind to you. Believe me, I envy you not, but partake of it vividly.

I have rambled along without writing a word about the President or Congress. The war is not yet begun. It will no doubt come. My best regards to Lady Coleridge and family.

Early in 1872 Mr. Binney made the last contribution of his brain and pen to the service of his fellow-men, in the plan for an endowment trust for St. Peter's Church. A few years after resigning from the vestry of Christ Church, he had joined St. Peter's parish, to which in time he became deeply attached. With his keen recollection of the beautiful churches of England, he probably shared the view strongly (but unsuccessfully) advocated by his son and some other members of the parish, that the architectural taste of the founders of St. Peter's was inferior to their religious faith,

and that the example of the latter would not be lost by erecting, in the place of the old church, a structure which should represent, as far as possible, the best traditions of English Gothic, the architecture of that communion to the uses of which the building was devoted. At all events, he firmly believed that St. Peter's, on the site which it occupied, had a permanent work to do in the city, and that its perpetual maintenance should be provided for. By 1872 very many of the parishioners had removed from that neighbourhood, and it was evident that the congregations of the future might not be able to support the church as their predecessors had done. Realizing that a permanent endowment was required to meet these changed conditions, Mr. Binney drew up a comprehensive scheme for the gradual accumulation of the necessary fund, together with a brief statement of the reasons for the undertaking. The vestry adopted the plan at its Easter meeting, and time has since demonstrated its success and utility. In fact, Mr. Binney was able to see, in his own lifetime, a substantial beginning of the present endowment.

By the death of Mr. Samuel Thatcher, of the class of 1793, in July, 1872, Mr. Binney succeeded to the distinction of being the oldest living graduate of Harvard College. The seventy-five years which had passed since his own graduation had not dulled his love for his Alma Mater, and it was with "a pain that has the sadness of sorrow" that he learned in November of the serious loss which the college had suffered from the great fire in Boston, a loss which, as was but natural, he speedily bore his share in alleviating.

His unusual mental vitality in his last years seems to have caused a general impression that his bodily strength was similarly abnormal, and hence he was continually requested to participate in public meetings long after he had ceased to attend them. Thus in September, 1872, when the Penn-

sylvania Academy of the Fine Arts, of which he was the oldest living member, was about to lay the corner-stone of its new building, he could say in all sincerity that he would gladly have complied with the request, but was forced to add, "The thing is simply impossible to me. I have not bodily strength to take any part in the ceremony or even to be present at it, and should oppose both family and medical advice in making the attempt. At the age of ninety-three strength of body and mind are worth fostering for private use; but mine are not of the least avail for a public occasion. Still I am thankful for health to enjoy old age for some purposes, and to be especially gratified by the prospect of the renewed career of a liberal and honoured institution of our city and country."

*(To Sir J. T. Coleridge.)*

PHILADELPHIA, 10 Sept., 1872.

I came home yesterday from the country residence of one of my sons-in-law, where, with my unmarried daughter, I have passed the last two months, coming only about once a fortnight to the city, to look after my household, or such matters as called for my action. The country air has been pure and the verdure singularly fresh and beautiful the whole summer; never in my recollection as much so. Frequent rain, in either moderate or profuse showers, so frequent, indeed, as to have done harm to some of the field as well as garden crops, has been the cause of this extraordinary greenness of the country, up to this second week in September. Not a leaf seems to have fallen or to be withered. And yet the heats have been so great and nearly constant in country as well as town, that nothing in time past is recollected like it, and the lassitude it has caused in old people, especially in myself, has sometimes been alarming, and always prostrating body and mind. I have not put pen to paper for the entire summer, even to reply to letters from two of Horace's girls, who have written to me from Ventnor, in the Isle of Wight. . . .

I am very glad to hear that the arbitrators at Geneva have made their award. We do not know the sum they have awarded, nor any particulars of the award, but it is understood to be sufficient in amount and not thought extravagant or excessive on your side. I hope it will place our public relations in a good condition and leave no thorns in the flesh. Nevertheless, being of kin, we shall probably have the usual altercations of kindred of rival interests. We may thank Grant for the Treaty. With a Democratic party in power war would at one time or other have been the result of the "Alabama," etc., outfits. The people of this side will now gradually regard the matter as arranged in a fair manner and upon safe principles for both nations.

I dare say you have not been surprised by the extravagances of a democracy, or the selection of Mr. Greeley as the candidate of the party to whom he has been all his editorial life opposed, and who is, moreover, a person whom judicious persons of any politics would be slow to select for their leader in government. To many it seems that the selection was the breaking up of the Democratic party; to me it has looked more like the breaking up of the Republican party. But without saying what it proceeded from, or will result in, the absurdity of my voting for Greeley instead of Grant would be such that I should be ashamed and stultified by the vote for the rest of my days. But this is not very great praise of Grant as a statesman. His military services have been great, and his civil duties as President performed with pure intentions; but his capacity as a statesman is generally thought, by those who wish him well, to be of very limited extent. I think him honest, and not a good judge of men. His honesty carries my vote against Greeley, without the least doubt; but I have little hope that his second administration will be much better than the first. In our foreign relations he has been sincerely desirous of amity on right principles. He has been opposed by some able persons in the Senate who were his friends at the outset. The Senate at large we think has been for some years past disposed to claim a greater control in the executive department than properly belongs to it. Mr. Sumner has really hurt himself seriously, with our greatest and best thinkers, by his course. Grant's path with the body has not been an easy

one, and would not have been to a man of higher civil power, and of much wider knowledge of men, and of affairs.

I hope you have no fears for the Church of England. I cannot be persuaded that even a separation from the State (improbable as that seems to be) could do her any harm. My courage has been fortified by the Bampton lectures of the principal of Lichfield Theological College, Mr. Curtis. I should be very glad to know what you think of the matter. The steadiness of our own Church is thought to be unshaken, and her orthodoxy perfectly assured, notwithstanding the Illinois case and one or two here which have had like results.

But my paper is out. I hope your health still enables you to enjoy your books and friends. I believe that Lady Coleridge was able to visit your son at the bar feasts in May in London. That was an achievement, if it took effect as intended. I could not have done it, certainly. Pray give my best regards.

In June, 1873, Dr. Allibone published his collection of poetical quotations, dedicating it to Mr. Binney as "The Head of the Bar in the United States," and citing, as his authority for the title, the statements of Senator Sumner and Mr. William M. Evarts, afterwards Secretary of State and ultimately Senator. This dedication brought out the following letter:

(*To Dr. S. A. Allibone.*)

19 June, 1873.

I found on my office table yesterday P.M. a splendid volume of your "Poetical Quotations," and, looking at a blank leaf before the title-page, read that it had been sent to me "with the author's compliments." Struck with the beauty of the book, and pleased by a recognition of your singular aptitude for such a selection by indexes of discriminating titles, I took the volume to my daughter and sat by her side to hear her remarks. At her third or fourth comment of approval, she said, "But here, did you see this?" and then dumfounded me by the *dedication*. "Bless my stars," thought I, "if this is not a

case of sudden insanity in my friend Allibone, I'm no *judge*, whatever he may think of my being the head of *the bar*. It is a clear case of partial insanity for Dr. Kirkbride," and I said as much to my daughter.

"But you won't say this to Dr. Allibone; you will write him your best thanks."

"Best thanks, of course; but I will write him the very words."

"But what do the words mean, 'The Head of the Bar in the United States'? You have a gray head, and a very old head, and are perhaps the oldest living man who was long at the bar. It does not mean a great deal. Besides he cites authorities."

"That is it. That proves what I say. That shows it to be a case of partial insanity. The thing cannot be proved, is not provable, is not true; the authorities will be contradicted by other authorities; it is not, and will not, be true of me if I live to be as old as old Parr and getting more law every year instead of losing all I had. In its comprehensive sense, it is not true of any man at this bar, or at any other. In a popular sense, it is merely a compliment and not a very precise one."

And so I tell him, and thank him, and remit to him the pains of Dr. Kirkbride and Blockley, and hope his beautiful quotations may assuage many a patient in the female's and at least a few in the men's.

Meaning to solace myself more with the book, if health is spared to me, I may add now that the three indexes of authors, subjects, and first lines, are in their union or junction new to me; and that they seem to be the three links or strands of a chain by which, at most, every man holds and associates all the poetry he imperfectly recollects and wishes to recall by very words.

(*To the same.*)

7 Jan., 1874.

I have been waiting three mornings for light in my offices, to reply to your kind note. The light has not come, and I know not when it will; but my reply must now go, or you may think my memory has departed, tho' as yet my years have not.



I thank you heartily for your remembrances and congratulations. You have shown very clearly that in point of years I have lived more of them than, in the annals of the bar, have been assigned to the most eminent English judges. That fact, however, admits of hardly any inference. It is true of itself, but it does not prove anything else to be true. Certainly it does not even *tend* to prove that I have lived one-tenth as long as either of them in public use and value, or in good works, or travelled one-tenth as far into the highlands of legal or ethical science, or even lived longer in any sense which distinguishes a wise man from a fribble. Therefore I regard the fact of having lived more years than a dozen men of the same calling or career in another country or in *this*, however great they were, as a completely barren fact. It produces nothing. It produces nothing in the sense of causation, tho', as a consequence, it is followed in a few instances, or *there follows afterwards* to me, on or about a certain day of a certain month in the year, a very kind letter or two, in which certain illogical assumptions are implied, which are flattering, but not at all sustainable, and which I could not be seriously thought to adopt, unless it should happen (which, I pray God, may not!) that I had lived so long as to have survived *myself*.

(*To J. C. Hamilton, Esq.*)

PHILADA., 21 Sept., 1874.

We got back to town the day the rain began, and are all right. You have no doubt received my daughter's letter in reply to your very kind one. If you had received my last letter to Cooperstown, you would have known that my health was as usual, rather firmer than before, as it still remains; but the failure of one letter, and my not knowing where you had gone, when you left Cooperstown, were the causes of our non-intercourse.

Who the good lady was who gave the sinister account of my health, I do not know. I hope she did not wish me dead, as some persons do, who get tired of hearing (horrid blot) that I am living so much longer than I ought to do. But that is the way with some people. I must live till my time comes; and I mean, if I can, to live

contentedly until it does come, whatever may be the fatigue I give to such persons by so doing.

Let me know how you are yourself, and be assured that whenever I shall be called hence, you will lose, though a very useless, a very sincere friend.

Excuse my not copying, to remedy the blot.

(*To Dr. S. A. Allibone.*)

8 Oct., 1874.

You ask me, in your note of yesterday, to select some quotation from my own *beautiful prose* (no doubt) to go into your forthcoming work. I should be puzzled to find a single one that would satisfy anybody, especially myself. But if there were as many as the army of Xerxes, I should feel like the most impudent monkey on earth if I myself were to quote a single line as worthy of my selection. Known or unknown to others, my conscience would glow with a shame reflected from the impudent brass that would confront me on the pages. At my time of day it is morally impossible. Nevertheless I am, just as much as before your request, your friend and respectful servant.

HOR: BINNEY.

P. S.—Very dark day for a nonagenarian.

(*To Sir J. T. Coleridge.*)

PHILADA., 15 Oct., 1874.

I ought before this to have acknowledged the safe arrival of your photograph from the original portrait by your son's wife, and also your last letter of 27th July.

The photograph, Judge Hare assures me, is a most excellent likeness, and I value it particularly as it was taken from the work of Lady Coleridge; but when I place it by the side of the portrait which you formerly sent me with your own name and date of September 2, 1860, I perceive some changes which time has made, and some which are the impression of sadness rather than of impaired health. It is now framed and suspended in one of my offices, as that of 1860 is in the other, and there I shall have one of them before me in whichever I sit.

1874]

## LATER YEARS

Your letter is a proof, I think, and hope, of improved health; for that time, at least, improved, and I trust it may continue for years. Your resolution to "bide your time, in your own chimney corner," instead of taking the wearisome dose of hibernation in Italy or Southern France, is a perfectly wise one. So many things besides climate are necessary to the comfort and even the continuance of life in advanced years and failing health, that I should make the like decision for myself without any hesitation. May it become abundantly clear that it has been the best for you!

As for myself, my health remains comfortable, but of course with little vigour. I have no organic disease, except in the whole organism, and few men at my age are without that. The hot weather exhausts me, and the cold weather pinches me, as it seldom did before I was eighty; but the pure air of the country, in which I live for three months of summer, and a well-warmed house and offices in winter and cold weather, prevent much suffering. I cannot walk far, but can ride twelve or fifteen miles daily in our park without the least fatigue. My sight and hearing are still pretty good, and I still read by daylight, and listen to reading at night or in any light with satisfaction. Upon the whole I ought to be thankful, and I am. While I have any memory remaining, I shall have most affectionate recollections of you, and of your many kind letters; but I write few letters, and I think I ought not to ask you even to acknowledge this, which is nothing but an acknowledgment itself. . . .

(*To Dr. S. A. Allibone.*)

20 Nov., 1874.

I should have answered your note of the 18th, and its enclosed paper with the signatures of highly respected friends, *immediately*, had I not thought proper to *appear*, at least, to take time for the consideration of the request,<sup>3</sup> or suggestion, conveyed by that very flattering paper. But I might have given my reply without a

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<sup>3</sup> A request that Mr. Binney would collect and republish his scattered writings.

moment's further consideration than had been previously forced upon me by my very advanced age, and by a similar suggestion, made *nearer home*, but not of greater weight, or more respected. . . .

There are two irrefragable reasons—I may say *convictions*—that it is both impossible and inexpedient on my part to perform a task, of which the responsibility would be all *my own*, by whomsoever it might be requested or imposed. They are briefly these:

1. My life, at my age, would be broken down by the attempt. Comfortable as it is made by great caution and regularity, its condition is dependent upon the liberty to "*far niente*." Those who know me best, and want me most, if they were aware of such a purpose, would apply to some of my legal friends, whose names are subscribed to the paper, to have me placed under restraint. No one but myself could do the work; and, within six weeks of ninety-five, I may *gratefully* confess that I am *past work of any kind*.

2. But the other reason for non-compliance is equally or more strong, and the conviction of its force, in the party who is to bear the responsibility of an error on such a point, ought not to yield to any persuasion by friends, whose judgment on other points he might prefer to his own. This is a question of feeling, in some degree of taste, and to a certain extent, of the writer's own standard of literature. Now, I must say, with all sincerity, that at no time in my life have I regarded anything that I have printed as entering into the domain of literature at all, or as worthy of assuming any other form than that which I gave it. No union, or collection, altogether, or in fewer parts, would change their character or bring them into *permanent* connection with any literature whatever.

Pray inform my much respected and valued friends that I am *proud* of their testimonial, but that I am not a particle the *vainer* for it; for I look upon it, and value it, rather as a *moral* contribution to the character of what I have occasionally printed, and not to critical judgment upon it.

The predominance of the Republican party in Philadelphia after the close of the Civil War, and especially after

the extension of the suffrage to the negroes, was attended by a serious falling off in the quality of the men elected to local office. The deterioration was gradual, but it was none the less decided; and to Mr. Binney, who, though never calling himself a member of the Republican party, approved the principles for which it originally stood and still claimed to stand, it was very painful to see affiliation with that party used as a cloak by men who sought office for themselves or others mainly for some personal advantage, or to see local offices used as pawns in the game of national politics, in utter recklessness of the great injury thereby inflicted on the community. Writing to Mr. Hamilton in October, 1871, when the great movement against the Tweed ring in New York was in progress, he said, "Politics are the real source and strength of the fraud and thieving that is everywhere prevalent. Party men on both sides are so thoroughly bent on their objects, that they will use rascals, and promote plunder, even when they profess to hate it. We have the robbers in office here. The Republicans will put them in office, if they think it will help what they call the main chance; and frown on all efforts to organize a body that only aims to proscribe their well-known rascally candidates."

For some years Mr. Binney rarely voted at local elections, owing to the dearth of candidates whom he could conscientiously support, but in February, 1874, when the misrule of the majority party had provoked a more determined opposition than usual, he was ready to take sides. The sight of an aged Federalist in a Republican stronghold, braving the chill of a wintry day to vote the Democratic ticket for lack of a better, was a striking lesson in non-partisanship, all the more so, perhaps, as it turned out that in that contest, as in so many subsequent ones, the dead weight of party

spirit and the "cohesive force of public plunder" were too strong to be overcome. This Democratic ballot was apparently the last that Mr. Binney was able to cast, but, as the next letter shows, he remained in opposition to the party to which, during the first years of its existence, he had given his steady support.

(*To J. C. Hamilton, Esq.*)

PHILADA., Nov. 23, 1874.

I am writing this in almost Stygian darkness, for I cannot write by lamplight. When I received your letter of ye 18th, I had unfinished writing on hand, and could not but give much better light to its completion; and then my wearied hand compelled me to put off my acknowledgment of your kind note to this morning, when clouds and rain from the south have swallowed up nine-tenths of daylight.

In other respects I am as usual, no better and no worse. I am glad that you seem to be better, and have a number of years to grow even better. I have no such chance.

. . . But what is this falling-off to what has happened with the great Republican party? If it is not on its back, and its back broken, it is at least on all fours, and must come down flat before it can get up again under the same name or another.

Pray write me when you can what men of sense among you think or predict is to happen when thorough Democratic rule shall be established. I rely on you in this department. Their opinions are not likely to affect me, because I feel certain that I shall be gone before 1877; but one likes to hear what men think while one lives, and I think your report may be relied on.

Some great change must occur to give honest men, however numerous they may be, a possibility in this city to elect honest men to office; for they cannot give the nomination to honest men. Rogues who affect to be on their side in politics always combine and succeed in getting the *pas*, and then nominate themselves, or other rogues like them, and another ticket becomes hopeless.

## 1874] STRUGGLE FOR GOOD GOVERNMENT

But the darkness grows more intense, and I must stop. Pray keep well, and write when you can give me light on the future of this country, if you can.

I cannot see to read what I have written. Please correct what is wrong or illegible to your fancy.

The year 1875 found Mr. Binney still in possession of an active and unclouded mind, and with bodily strength not noticeably less than it had been for four or five years before. He was subject to attacks of rheumatism, and could take but little physical exercise, but he drove out for some hours every day that the weather permitted. His handwriting had lost its firmness, but the letters he wrote, though few and short, showed no signs of any mental decline. If he could not read as continuously as of old, there was no falling off in the quality of his reading, nor in his complete ability to master all that he read. He suffered much from the unusually severe and protracted winter, which kept him housed as he had never been before, but with the spring his customary health seemed to return, and his drives in the park had a new interest in the sight of the preparations then just begun for the exhibition which was to commemorate the first century of our independence, a century which nearly coincided with his own life. Some records of his appearance and conversation at this time are found in the note-book of the late Mr. Henry Armitt Brown.

*“December 30, 1874.*—Met Mr. Carey by appointment and went with him to see Mr. Binney. Instead of going to the front door and ringing the bell, as I expected, Mr. Carey entered the little entrance, and, reaching the inner door, knocked sharply twice. A slight noise, succeeded by unbolting and unbarring, followed, and the door was opened. Mr. Binney himself stood before us. He seemed about the

middle height. On his head he wore a black skull-cap. A large folio lay open on the table, and his spectacles lying beside it showed what he had been doing. Greeting Mr. Carey pleasantly, and shaking me by the hand when introduced, he asked me to sit down, and, having taken up the big folio, walked over to the end of the room and placed it carefully on the lower shelf; then, returning, took a chair facing and between us. After a few general words, Mr. Carey spoke of the near approach of his ninety-fifth birthday. 'Yes,' said the old man, 'I shall be ninety-five in a few days. I don't know how it is that I have lived so long. It has stolen on me unawares. Up at Cambridge they want to make a great deal of it, but I tell them they shan't. I tell them they shan't [repeating it]. Survivorship is the meanest thing in the world. When I was at the bar I never could make anything out of a case that had nothing but that to recommend it. In my case, the fact is,—as I tell them at Harvard,—I have happened to outlive—not everybody, thank God!—but a great many dead people.' . . . When we had been seated about a quarter of an hour there was a pause, when he drew out his watch and, in a very courtly tone, said, 'You must excuse me to-day; I have an engagement to drive with a lady. The next time come earlier;' and, turning to me, 'I shall be glad to see you soon again. I will let you into the secret way of getting in. Did you notice the way in which Mr. Carey knocked? [knocking with his knuckles, as he spoke, on the table]. Well, come to the side door and give that knock, and if I'm here I'll let you in. That was the old Phi Beta Kappa knock we used to have in Cambridge in '93. Come about ten o'clock in the morning.' With a few words like these he ushered us out in the most lordly manner. I have never seen an old man who seemed so much the master of his faculties. I had im-



aged him much feebler and more broken. In repose, his face looks old, but when animated, in conversation, not remarkably so."

"*February 10, 1875.*—On my arrival at the office I took advantage of the hour, and the fact that nothing pressed, to call on Mr. Binney. On knocking with two raps at his office-door, it was opened, and, to my surprise, he recognized me at once. He wore, as usual, his velvet cap, which hides the top of his forehead. He drew a chair before the fire and bade me do the same. A glance at the table showed me that he had been reading John Quincy Adams's Memoirs. I began to speak of them, when he started off at once. 'Adams,' he said, 'was in Congress with me in '33 to '35,—an admirable man. I confess I have never quite made up my mind on the question of the bargain charged as made between him and Mr. Clay, though I think the friends of both parties must have had an understanding.' He contrasted, with some degree of earnestness, Adams's refusal to appoint a relative to office, even at the request of the President, with the practice of great men of to-day. He spoke of the change for the worse in public men,—mentally and morally. 'When I was in Congress there were men of ability and honour in public life, but the bad ones were getting the ascendancy very rapidly, and it has been growing worse ever since.' I said I thought that General Jackson had done much to debase politics. 'Yes,' he replied, 'undoubtedly.' . . . 'Clay,' he said, 'was a delightful man to talk with and hear speak. He had a fine voice and manner, but his speeches did not read well. Webster, on the other hand, sounded sometimes dull, but the next day what he had said seemed excellent in print. He had extraordinary power. I have heard him sometimes when he seemed to lift me up to my tiptoes. He was not a great lawyer. He had not

thorough training or deep learning, but in the argument of constitutional questions he had no superior.' I spoke of the Girard Will case as one in which he had not sustained his reputation. 'He had the law against him,' was the reply; 'and, besides that, he didn't understand the law in that case. Had he done so he would have been in a far worse position than he was.' But in the Dartmouth College case,—'Ah, there he had the law with him. In constitutional questions,' he repeated, 'he was unequalled. I have always said that he was superior even to Chief Justice Marshall, and you know I heard his speech in the Jonathan Robbins case when I was a law student.' . . . 'Marshall and Webster,' he went on, 'were, of course, very different. The former seemed to make link after link, until he had joined two points with a perfect chain. His logic was wonderful. But Webster seemed to strike a succession of ponderous blows. He bore down everything before him by his weight.' Further talk about Mr. Webster led Mr. Binney to speak of Jeremiah Mason, 'one of the greatest lawyers and greatest men this country has produced.' 'He was a giant in size, and, by the way, the Chief Justice of Massachusetts was here to see me the other day,—an enormous man, too; nearly as tall as Mr. Mason,—Mr. Gray.' He asked me if I had read his (Mason's) *Memoir and Correspondence*, prepared by Mr. Hillard, of Boston. I had not. With that the old gentleman rose and searched for a moment in one of his bookcases, but could not find the volume, giving it up at length with the remark that his daughter arranged his books when they got in disorder, and that he would send it to me. He asked me if I had received an invitation to go to the celebration which they are to have at Lexington on the one hundredth anniversary of the fight. I answered that I had, and hoped to go. 'I am too old for such journeys now,' he said. 'At

ninety-five and over I cannot go so far from home.' . . . After more than an hour's talk I took my leave. The interview was most interesting in every respect. There is nothing to indicate great age in Mr. Binney but the loss of teeth, which often makes his words a little indistinct. He is neither blind nor deaf, and every faculty seems unimpaired. He stoops considerably, but his eye—a deep blue—is still bright. . . . In everything he says you notice the man of power. His language is always correct and beautiful.”

“*June 7, 1875.*—Called this morning on Mr. Binney. He was in his back office. . . . The back office is a large, pleasant room, with straw matting on the floor, and two large windows opening out upon a broad garden full of trees and flowers. Mr. Binney wore his little cap, as usual, and seemed to me at first rather feeble for him, or, to speak more correctly, less vigorous than usual. . . . I turned the subject presently upon Mr. Adams's Memoirs, the sixth volume of which he had just commenced, and remarked that I thought it strange that so able and learned a man as Mr. Adams, living in the period in which he filled so large a place, had taken no part in the discussion of the great constitutional questions which arose. He seemed to have contributed nothing to constitutional law. Mr. Binney replied that ‘the reason was that Mr. Adams did not take naturally to legal questions, and was not a well-read lawyer. He practised a little in Boston, but not much, and he did not feel much interest in, or enthusiasm for, the law. But he had a natural gift for politics and government, and they had the wisdom in Massachusetts to perceive this political capacity very early, and to send him to the Senate. He acquired in time a thorough knowledge of European and American affairs, and in some things he was the fullest-minded man I ever knew. But he was no lawyer. When

Mr. Cheves was president of the Bank of the United States, the question arose as to the duty of the bank to redeem the notes of various States in government notes at Philadelphia, and Mr. Cheves, who was not much of a banker and stayed here but a short time,—but a very estimable gentleman,—came to me for an opinion. I gave him one, and said that the bank had to do it, and pointed out that the arrangement as made by General Hamilton was one mutually advantageous for the bank and for the government. He was not satisfied, and Mr. Adams insisted that the opposite view must be correct. Together they got an opinion from Mr. Pinkney, in which he agreed with me. I think they got six opinions and all the same way. Even then Mr. Adams said he supposed it must be the law, as it was so stated by gentlemen,—about whom he made some complimentary remark,—but he couldn't be satisfied.' . . . I asked Mr. Binney if he had known Mr. Pinkney. He answered, never; he had never seen him. But he was a man of great power, undoubtedly. He then went on and told me of a case in which [he] <sup>4</sup> had defended a ship that was brought in as a prize,—the first case of the kind, and the principles of maritime and prize law were new then and the questions that arose unsettled. 'I won the case here, and it went to Washington. I won it also, I remember, at the Circuit Court before Judge Bushrod Washington. For some reason I did not go to argue it in the Supreme Court; I don't remember why. Mr. Pinkney was engaged on the other side and made a great argument, and she was condemned. Judge Washington dissented, but gave no opinion; but he spoke to me

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<sup>4</sup> Mr. Brown's note-book states that Mr. Pinkney (erroneously referred to as Mr. Pinckney) defended the ship, which is of course a mistake. Being Attorney-General at the time, he naturally conducted the argument for the captors on appeal.

afterwards of the matter, and said I ought to have gone down, that Mr. Pinkney's argument had carried the court.' . . . I spoke of the change in the bar and the want of ambition among its members to become accomplished lawyers in the highest sense. I said I knew of but few men of my time who seemed to me to have a very high ambition. Mr. Binney continued: 'I am so much retired, and see so little of the world in my privacy here, that there are many things which I do not see in which I would take interest. Doubtless you are right, and the bar has degenerated. All that I have seen and heard confirms your opinion. But you must remember that the times have changed, for Philadelphia, up to 1806, and even much later, was the commercial metropolis of the country. All the underwriting was done here; the great cases arose here or came here for settlement. It is not so now. We have necessarily grown provincial, and, with the decline in the relative importance of the cases which it tries, the bar has fallen off. But,' he went on with much animation, 'remember, the more commonplace the bar the better is the chance for ability and industry; for there is always work enough in Philadelphia, and important work too. If the general run of lawyers do not strive for the first places, there must be all the more room in the front rank. Cherish an honourable ambition. Be strict in attending to your business. Prepare yourself with care. Be industrious and study hard, and resolve, no matter what the temptation may be, never to do an unworthy action or take a mean advantage, and by all means'—here he leaned forward and placed his hand upon my knee—'cultivate your talent for public speaking; then, take my word for it, the reward will come.' Continuing in this strain, he spoke next of the changes in the condition and prestige of the bench. 'To think that there should be chief justices of Pennsylvania by

the score! But we mustn't slander any one; there are some excellent gentlemen among them.' I asked him if he did not attribute the decadence of the judiciary to the elective system? He said, 'No; I don't think that to return to the appointive system would entirely cure the trouble. Governors are partisans and are apt to appoint partisans, and, on the whole, I think the people may be trusted to choose men as fit as those whom governors would select; but the office should be held for life during good behaviour,—that would make the incumbent independent of all political influence for a re-election. When the late convention<sup>5</sup> met I urged these views upon several gentlemen without avail. But to make our judges dependent every few years on the favour or fancy of political conventions is all wrong. Too much cannot be said against it.' After a two hours' interview I rose to go. He shook me very warmly by the hand and said I must come again soon. . . . The impressions made on me by previous interviews were deepened by this. It seems quite impossible, as you hear Mr. Binney talk and watch the changing expression of his intellectual face, that he is within five years of being a hundred years old. His voice is not weak, and were it not for the loss of teeth would not sound like that of a very aged man. His eye is bright. When I came in and he saw me, it kindled with a pleasant light of recognition as many a younger man's might not have done, no matter how friendly his feelings to me. He is not deaf. The instant I knocked at the door I heard his prompt 'Come in.' He stoops very much, but it is rather the stoop of a scholarly habit than of age. The most remarkable thing about him is his conversational power,—if I pass by the extraordinary memory which shows itself in all

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<sup>5</sup> The Pennsylvania Constitutional Convention of 1873.

he says,—for he remembers everything, even the name, to-day, of the vessel which he defended,—the first prize brought in in the war of 1812, and which I have forgotten already. In what I have written of his conversation I have tried to recall his words, but I have been able to do so very imperfectly. He reminded me all the time when he spoke of what Chesterfield says of Bolingbroke, that his eloquence was of so pure and fine a character that were his ordinary and familiar talk taken down as it fell from his lips it might have been printed without correction either as to the method or style. It is without question the purest, smoothest, most dignified, and elegant conversation I have ever heard.”<sup>6</sup>

Not long after this last interview, Mr. Binney went to his son-in-law's country place, as usual in the summer, but thought himself quite able to endure even the heat of the city. He still kept in his own hands much of the management of his affairs, and as they had always called him to the city for the first few days of August, he saw no reason for making any change even in his ninety-sixth year. He therefore returned to his house, but was almost at once taken ill. He slowly sank more and more, and on the morning of August 12 his long and active life came peacefully to an end. Four days later his body was laid to rest beside that of his wife, in the church-yard of St. James the Less.

On Saturday, August 14, the bar of Philadelphia met at noon in the Supreme Court room, to honour the memory of him who had so long stood at its head, and who had himself repeatedly paid a like tribute to those who had gone before him. Mr. Justice Strong, of the Supreme Court of the United States, presided, and the addresses testified to a universal conviction that the biographer of the leaders of

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<sup>6</sup> Memoir of Henry Armitt Brown, by J. M. Hoppin, pp. 102-115.

## HORACE BINNEY

the old bar had himself been "a leader inferior to no other." The resolutions adopted were as follows:

The last and one of the greatest of that body of lawyers who represented the bar of Philadelphia in its best days; one eminent in our city, State and country; one who, though long withdrawn from active life, has been spared to us a monument and example; the Hon. Horace Binney, ripe in years and in honour, has gone to the grave, and the bench and the bar, meeting here to express their regret, and to hold up his memory for the future in a fitting manner, do resolve:

That Mr. Binney, as a representative of Philadelphia in the National Congress, and in all his interventions in public affairs, gave conclusive evidence of the value of the services of the high-toned and educated lawyer to the government and the community.

That of his worth as a citizen and the sincere and the unfailing esteem of the community no better proof can be given than the fact that to the last, through all his declining years, notwithstanding the retirement and privacy of his life, he was always brought forward in periods of alarm and danger, and his advice always sought when the situation was so critical that to secure sound opinion and to impress it by loftiness of character were deemed essential to our safety.

That at the bar, in the sphere which he loved the best and adorned the most, he was among the ablest of those of whom we have knowledge; learned, acute, calm and wise in deliberation, prompt and brave in decision and action, as unerring in action as it is permitted us to be, cogent in argument, polished and graceful in rhetoric; upright to a degree so fully recognized that he was lifted above coarse solicitation and stood apart from ordinary temptation. No man sought him who did not believe that he was securing the highest ability; no man approached him who thought that success depended on indirection.

That as a gentleman of elegant tastes and acquirements his efforts have shown how much he might have added to the treasures of our literature if his inclinations had led him more decidedly in that direction, and his pure and forcible English must always occasion



regret that he did not leave us more of the products of his pen in fields other than those of his profession.

That if social and domestic excellencies and the unstained purity of private character are traits that may, with delicacy, be noticed here, we may hold up Mr. Binney to the best of all classes as a model of a husband, a father, and a friend.

That in the unusual length of Mr. Binney's life, in his long-continued enjoyment of a robust body and vigorous mind; in his apparent freedom from the ordinary weaknesses and sufferings of old age, we have evidence of that strong self-control for which he was remarkable and which led to habits conducive to such results; and in the dignity, we might almost say majesty, of those descending steps we see the same self-control keeping alive to the last the graces of the refined and cultivated gentleman.

That by us who now tread the difficult paths which he trod with such success, the memory of a life so closely connected with the proudest period and highest honours of our profession must be fondly cherished. It is part of our history, part of that property which always resides in the reputation of our class, and we must, if we are true to ourselves, ever hold it up for our guidance and encouragement.

That we feel that this customary meeting of the bar does not sufficiently fulfil our duty or satisfy expectations; that something more formal and public should be done to mark our estimation of one so good and eminent, and that a committee be therefore appointed whose duty it shall be to communicate these resolutions to the family, with our sincere and respectful condolence, and to take such measures as they may deem best to do further honour to Mr. Binney's memory.

The wish expressed in the last resolution was carried out some five months later, when Judge Strong delivered his "Eulogium on the Life and Character of Horace Binney," at Musical Fund Hall. The theme was well handled, and the character of the audience which thronged the hall testified to the appeal which Mr. Binney's long life had made to all that was best and noblest in his native city.

## HORACE BINNEY

Since the death of Horace Binney the city authorities have seen fit to perpetuate his memory by giving his name to one of the public schools not far from the spot where he lived, and also by carving his features on the key-stone of an arch of the City Hall, inside the main southern entrance. As this entrance leads to the courts of law, and upon it the word "Justice" is inscribed, there is some appropriateness in the site chosen; but not one in ten thousand of those who pass under the arch ever notice the face which looks down upon them, and still fewer have any idea whose face it is. It is a pity that there has been no accompanying inscription to arrest the attention of the passer-by. Perhaps the most striking inscription would have been simply the concluding words of the speech on the Removal of the Deposits,—"*The spirit of party is a more deadly foe to free institutions than the spirit of despotism.*"

## CHARACTERISTICS

### XVI

#### CHARACTERISTICS

**I**N the opening words of his Eulogy upon Chief Justice Marshall Mr. Binney had said, "The Providence of God is shown most beneficently to the world, in raising up from time to time, and in crowning with length of days, men of pre-eminent goodness and wisdom. . . . It is a provision in the moral government of the world, to hold out constantly to mankind both the example of virtue for imitation and its precepts for obedience; and the moral constitution of man is never so depraved to be totally insensible to either." The inducement to a nobler life, he said, "comes to all, and at all times, and with most persuasive influence, in the beautiful example of a long career of public and private virtue, of wisdom never surprised, of goodness never intermitted, of benignity, simplicity, and gentleness, finally ending in that hoary head which 'is a crown of glory, if it be found in the way of righteousness.' To this example all men of all descriptions pay voluntary or involuntary homage. . . . The very circumstance of its duration affects all hearts with the conviction that it has the characters of that excellence which is eternal, and it is thus sanctified while it still lives and is seen of men. When death has set his seal upon such an example, the universal voice proclaims it as one of the appointed sanctions of virtue; and if great public services are blended with it, communities of men come as with one heart to pay it the tribute of their praise and to pass it to succeeding generations, with the attestation of their personal recognition and regard."

## HORACE BINNEY

While Mr. Binney would have been the last to claim that these words, written of the great chief justice, could ever be appropriately used of himself, no one who knew his life and character could fail to see their applicability. He did not indeed occupy any such position before the nation and the world as did Marshall, but within his own sphere and his own community he undoubtedly won the first place, being practically regarded by all as the ideal lawyer and the ideal private citizen.

His ultimately unique position in Philadelphia was no doubt due in part to his great age. He was the visible link which bound the days of the Centennial to those of the Revolution. He had seen and known Washington, Hamilton, Adams, and the other leaders under whom the colonies had become a nation. He had striven to perpetuate the Federalist party in the days of Madison, he had fought against the ascendancy of Jackson, and he had defeated Webster in legal argument. He had brought his acute mind and able pen to the aid of Lincoln, and to him Grant had come to pay the respect due to his years and reputation. But it was not only the length of his life which was remarkable. During the seventy-five years since he had come to man's estate no one could point to any failure on his part to respond to the call of duty, to any good cause that he had deserted, to any bad cause that he had espoused, or to any act in which he had not shown absolute fearlessness as well as absolute devotion to what he believed to be (and what the test of time usually proved to be) the right principle. Partisan or professional opponents might criticise him, but they could never impugn his motives, his sincerity, or his courage. It was the character of his life, and not merely its length, which made him, as Sir John Coleridge truly said, "the great citizen of Philadelphia."

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In winning his position as a leader of the bar, and ultimately of the community, Mr. Binney's greatest strength lay in his thoroughness and his sincerity. From the first he had the confidence of the bench, and (as he wrote, in reviewing his career) "I endeavoured by all my professional as well as private life to show that I was not unworthy of it. I may say to my children that I never knowingly committed an injustice towards a client, or the opposite party. I never prosecuted a cause that I thought a dishonest one, and I have washed my hands of more than one that I discovered to be such after I had undertaken it, as well as declined many which I perceived to be so when first presented to me. I always regarded it as criminal to neglect the necessary preparation for my causes; and I believe all the bar would say that no gentleman of my day came generally better prepared for his trials, or less disposed to put them off. I at all times disdained to practise any stratagem, trick, or artifice for the purpose of gaining an advantage over my adversary; and unless I thought him unfair, I was generally willing that he should see all my cards while I played them. I can truly say that I am not conscious of having lost anything by this candour, but, on the contrary, have repeatedly gained by it. If my client was at any time suspected, I had no reason to think that I was by either the court or the bar; and how many balancing cases, in the course of thirty-five years practice, this sort of reputation assisted, I need not say. . . .

"I rarely, if ever, made a contract for a fee to depend upon the successful issue of the cause, and I never in a single instance stipulated to have a portion of the thing recovered, whether lands, houses, or anything else. My clients were of a description which rendered this mode of compensation as unnecessary as it would have been disagreeable to me. I was content to leave the fee to them, at the termination of the

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suit, and I never had a word of controversy, nor am I aware that I ever caused the least discontent in regard to a fee in my life. How much of the unpopularity of the profession has arisen from the practice of contingent fees, contracted for in country practice, I need not say. It never prevailed to any extent in the city, and certainly not in commercial suits."

In view of the above, one can readily imagine what Mr. Binney would have thought of the New York statute which makes the fees of a lawyer retained in a suit a lien upon any fund recovered therein by his client, or of the attempt to enact a similar law in Pennsylvania.

Many anecdotes are told in illustration of Mr. Binney's high standard in professional and business matters. Once, when an impatient litigant pressed him to insist upon the trial of a cause in violation of the courtesies of the profession, he was seen to spring from his chair, and, with flaming eyes, tell his client that if he were dissatisfied he could reclaim his fee, but that he himself was not the man to take advantage of the act of Providence, by which the opposing counsel was laid on a bed of sickness. On another occasion, in the trial of an action on a promissory note, when the defence of set-off had failed, he rose, and, facing the bench, said, in a tone of withering scorn, "My client commands me to plead the statute of limitations." The rebuke was not lost on the wealthy defendant, who personally withdrew the plea; but also, it is said, concluded that for the future a counsel with so keen a sense of honour would be too expensive a luxury.

Mr. Binney had what is undoubtedly an advantage to a lawyer,—a commanding presence,—and perhaps it was even a greater advantage in the more dignified days of a century ago than it is to-day. When in his prime he was tall, well-proportioned, and erect, his face strikingly handsome, with high, broad forehead, firm mouth, and well-set, piercing

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eyes. He was a good horseman, and his temperate life and love of the open air not only kept up his strength but preserved his features unchanged to a remarkable degree. At seventy-five he did not look over sixty, and to the last the weight of his many years bent him but slightly, while, though time silvered his hair, his eyes retained their strength of expression.

Whatever subject came before him was examined thoroughly, and his ability to search and sift the most complex questions, until he had mastered all their details and bearings, was only equalled by his capacity of imparting his own knowledge in the most convincing way. This faculty of expression seems to have been allied to his taste for music, the art which appealed to him more than any other.<sup>1</sup> His refined musical sensibility, aided by a thorough comprehension of the kindred art of language, guided, as it were, his voice and pen, clothing his thoughts in words as harmonious as they were appropriate and effective. Quickness of perception, ready play of fancy and humour, the treasures of a well-stored mind always at his command, made his conversation a delight to all within the circle of his familiar intercourse, while, when he spoke in court or in public, his strong, well-modulated voice and grace of gesture never failed to attract his audience, nor his ready flow of well-chosen language to hold their attention. His straightforward nature, moreover, gave the tone to all his words, and the strength of his arguments was equalled by their perfect sincerity.

His love of literature was always strong, and most marked in his later years, when his comparative leisure enabled him to freely indulge this taste, and to acquire thereby

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<sup>1</sup> He once wrote, "In my own family, music was the common language of every member of it." (Letter to Hon. D. A. White, February 19, 1855.)

## HORACE BINNEY

a cultivation usually confined to those who have made letters a profession. While his reading covered a very broad field, he read less for mere recreation than to furnish his mind with food for thought. For this reason he attached great value to indexes, and came, as he once wrote Dr. Allibone, "to regard a good book as curtailed of half its value, if it has not a pretty full index. It is almost impossible, without such a guide, to reproduce on demand the most striking thoughts or facts the book may contain, whether for citation or further consideration. If I had my own way with a modification of the copyright law, I think I would make the duration of the privilege depend materially on its having such a directory. One may recollect generally that certain thoughts or facts are to be found in a certain book; but without a good index such a recollection may hardly be more available than that of the cabin-boy who knew where the ship's teakettle was, because he saw it fall overboard. In truth, a very large part of every man's reading falls overboard; and unless he has good indexes, he will never find it again, how much soever he may look for it.

"I have three books in my library which I value more than any other there, except the very books of which they are a verbal index. Cruden's Concordance of the Bible, Mrs. Cowden Clarke's Concordance of Shakespeare, and Prendergast's Concordance of Milton. We may not want such frequent soundings on the charts of most books; but the fuller they are the more time they save, and the more accurately they enable the reader to explore and retain in memory the depths of the best authors for his present occasions."

Mr. Binney's resistance, except in a few brief instances, to all calls to public life, was not due to any selfish shirking of a citizen's obligations, and still less to any lack of deep



## A LIFE OF PROTEST

patriotism. Rightly or wrongly, he firmly believed himself unfitted by nature for the life of a public man, and certainly his independent and masterful spirit was ill disposed to the concessions and compromises by which public measures are usually carried, but no man could have been more keenly and sensitively patriotic. Probably the very sensitiveness of his patriotism helped to make public life repugnant to him, for it is certain that the spectacle daily before him during his term in Congress—the motives and methods of those who directed the affairs of the government—gave him deep and real pain. His love of his country and his concern for her honour were so intense that the highest standards of administration could alone satisfy him; and believing, as he did, that the prevailing standards were very low, and that he and the few men who thought with him were powerless to raise them, he felt that public life would be for him a perfectly useless martyrdom, which he was not called upon to undergo.

Those, indeed, who believe in swimming with the tide, and denounce as pessimism all criticism of prevailing conditions and tendencies, will see no commendation in what was said of Mr. Binney by a friend,—that “his greatest eminence is in the protest which his life has been against all about him.” To those, however, who hold that the capacity to form high ideals of government, and the power to understand political conditions and tendencies, are talents which the possessor is not justified in burying merely because the exercise of them is unpopular, a life of protest is never fruitless when the protest is in itself proper. Its teachings may be disregarded by the multitude, but they will always be treasured in the hearts of a few, to bear fruit in more favourable days.

Though a believer in party organization within proper limits, and an avowed member of the Federal party as long as its organization existed, Mr. Binney, for the last sixty

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years of his life, was simply what would now be called a Mugwump, a man who could not conscientiously adopt all the principles of any one party, and hence, while supporting the one with which he was most in accord, holding aloof from actual membership in any. In fact, this independence was so thoroughly a part of his character that if the Federal party had, like the Democratic party in 1896, kept its name and organization while changing its principles, he would have withdrawn from it, and it would have had no more hold upon him than had any of its actual successors. This independence was the direct and necessary result of his conscientiousness. He felt himself to be morally responsible for all his acts, and that the responsibility could not be evaded by attempting to put it off upon a party organization. The argument that

The side of our country must ollers be took,  
An' Presidunt Polk, you know, *he* is our country.  
An' the angel thet writes all our sins in a book  
Puts the debit to him, and to you the *per contry*,

never appealed to him in the slightest. For him the largest conceivable majority could not make that wise or right which he believed to be foolish or wrong, and while he never claimed infallibility for his own judgment on any point, he never shirked full moral responsibility for the exercise of it.

To his mind the subordination of the individual conscience to the will of the majority was one of the many evil results of democracy. "By far its worst present effect," he wrote, about 1840, "is upon the integrity of young men. They become hypocrites through their ambition. They sell their opinions for popularity. They profess what they do not believe. The first of all qualities, integrity, is the lowest at market, and the lowest of all qualities is most cultivated,

## VIEWS ON DEMOCRACY

that of acquiring a mastery over the prejudices and passions of the populace. How mean must a young man be who foregoes the inestimable satisfaction of always doing and saying what he believes to be right, to get power by fawning upon and flattering the men who are the very lowest in the scale of personal worth? How can this be done, without corrupting to the very core the youth of this country? And what must the men of the country be, when such is the universal taint of the young?"

The democracy to which Mr. Binney was so strongly opposed was not that of any one political party. He understood democracy to mean the rule of a numerical majority, claiming to rule simply because it was a majority, without any regard to its fitness for ruling, or to whether the ends it sought were right or wrong; and that feature of democracy which alarmed him most was the tendency to change wise laws and salutary customs to meet the popular whim of the day. His ideal was

A land of settled government,  
A land of just and old renown,  
Where Freedom slowly broadens down  
From precedent to precedent;

and democracy, in his opinion, was wholly subversive of such an ideal. "I have long thought," he wrote, early in 1864, "that if a people possess the frame, the freest and most durable government in the world is a constitutional monarchy, with adequate representation of the people, and a scale of society so graduated and so established as to prevent concussions between monarch and subjects, or sudden mutations. But we have not the frame, nor perhaps will at any time have the timber to make it. I think exactly what Hamilton

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did, that if our Constitution were fairly administered, it gives us the best chance, and yet it is only a chance."

That Mr. Binney was opposed to what he considered democracy did not mean, however, that he approved of absolutism in any form. He merely believed that the people were as capable of tyranny as any autocrat, and that the need of protecting the rights of the citizen by law was the same under a popular government as under any other. To secure such protection there should be, he held, a government of law, deriving its authority from the people, and in which the people should be fully represented, but a government administered mainly by men who were appointed, not elected, and who held office during good behaviour and not for any fixed term nor at the pleasure of the appointing power.

His opposition to democracy was based on a sincere belief that it was hostile to liberty. Such a belief may surprise those who have grown up in an atmosphere of democracy (or what passes as such), but it cannot be waved aside as wholly preposterous. Time has shown that there is a very large number of voters who, from motives of personal gain, direct or indirect, *prefer* to surrender their freedom of election and to vote as their party bosses dictate. Under the complicated nominating system everywhere prevalent in this country, and under the defective ballot system in vogue in most States, it is impossible to estimate the number of such voters precisely, but it is undoubtedly very large. Time has also shown that, with the perfection of party machinery, the party boss, even without holding office, can be a very thorough autocrat. That bossism and party serfdom are inimical to liberty is indisputable, and whether they are the natural fruits of democracy or a wholly parasitic growth, their connection with it is certainly very close.

Mr. Binney's opposition to the Democratic party was

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due to its having made democracy its fundamental principle from the start, but he was well aware that after the passing of Federalism, the democratic spirit affected all political parties. Writing about 1840, he said, "The Whigs are at this day more democratic in their devices and principles than the Democrats were in the days of Jefferson. There are few or no sacrifices of constitutional principle that the Whigs will not make to gain power, as readily as the Democrats. Their very name is Democratic Whigs; that is to say, they have entered into full partnership with those who trade upon the principle that the people are all in all, that their voice is *vox Dei*, that the masses are always right, and that nothing else is fundamental in government but this. What the Whig affix means, I think it difficult to say. It is certainly nothing more than a badge of preference for some matter of administration wholly independent of constitutional principle, and varying consequently from day to day. To-day it is tariff; the next day, internal improvements; the day after, something else; but the judiciary is not a Whig question, the qualification of suffrage is not a Whig question, the restraint upon naturalization is not a Whig question. The only question is how to obtain most of the sweet voices and emoluments of government, and this is as much a Whig object as a Democrat object, and there is no obvious or characteristic difference in the nature of their respective bids."

After the attempt to destroy the Union had aroused a revulsion of feeling in favour of national sovereignty as opposed to State rights, Mr. Binney undoubtedly became more hopeful of the country's future, believing that if the influences of slavery were exhausted, the Constitution would have a better chance than ever before of furnishing that stable government which its framers had planned. Unfortunately the bright prospect was somewhat dimmed by the

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effects of the spoils system, then running its course unchecked in all departments of the government, and presenting, in its inevitable consequences of corruption and misrule, a spectacle most painful for any patriot to contemplate. No indication of reform being then in sight, he could simply hope that this monstrous evil would in time be dealt with, as other evils had been dealt with in the past.

It is unnecessary to dwell upon the religious side of Mr. Binney's character, nor upon the warm and loving heart which coexisted with his somewhat reserved bearing. The foregoing pages indicate what manner of man he was in these respects. In contact with men of lower standards than he approved, his sterner side often asserted itself; but as the retirement of his later years protected him more and more from such contact, the occasions for sternness became less and less, and his innate kindness was rarely, if ever, obscured. As a friend<sup>2</sup> said of him, "It was also in the art of growing old that Mr. Binney's example was full of teaching; his presence had at once a charm and a majesty which were due to the high thoughts which were his habitual companions. As one entered his quiet study or library his gracious courtesy showed how fruitful, in a true sense, his rule of life had been to him,—that early acquired 'art or faculty of study.' With him intellectual growth was but another name for moral. It is good to think of that aged face with its fine outline preserved to the last, that serene and benignant look."

Mr. Binney was a man of varied attainments, whose every capacity was trained to produce the best results; and to produce them not merely for the benefit of those to whom he primarily devoted his life, but also, in so far as the times

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<sup>2</sup> Mr. Ellis Yarnall, in a lecture delivered at Haverford College, January 7, 1902.

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permitted, for the benefit of his city and his nation. "In youth a scholar of fairest promise, yet never coveting mere intellectual gains as the highest acquisition, achieving at the bar the foremost rank at a time when the leaders of the Philadelphia bar, to whom he stood opposed, would have graced Westminster Hall in its palmyest days, instructing the bench with the research, the discrimination, the perspicuity of his arguments; and, while devoted to his profession, never relaxing his love of letters; a proficient in the literatures of France and Spain, delighting in history and poetry, a close student of theology, he was much more than lawyer, much more than scholar. Always, with one brief exception, declining political office, indifferent to the honours which only waited his acceptance, he furnished a crowning proof of his eager interest in political issues and his unflagging zeal for the public welfare when, at the age of fourscore, he issued from his well-earned retirement to uphold the pillars of the state; and in the unflinching courage with which he more than once faced and conquered a perverted public sentiment, he merited the tribute paid by the greatest Athenian historian to the greatest Athenian statesman, that 'powerful from dignity of character as well as from wisdom, and conspicuously above the least tinge of corruption, he held back the people with a free hand, and was their real leader instead of being lead by them.' Such is the sway of wisdom, of courage, of unsullied integrity."<sup>3</sup>

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<sup>3</sup> Phi Beta Kappa Oration at Cambridge, June 29, 1876, by the Rev. J. Lewis Diman, Professor of History in Brown University.





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